

CIRCUIT COURT FOR BALTIMORE COUNTY  
Suzanne Mensh  
Clerk of the Circuit Court  
County Courts Building  
401 Bosley Avenue  
P.O. Box 6754  
Towson, MD 21285-6754  
(410)-887-2601, TTY for Deaf: (800)-735-2258

08/11/97

Case Number: 03-C-95-005091 AA

Date Filed: 06/19/95

Status: Closed/Active

Judge Assigned: To Be Assigned,

Peoples Counsel For Baltimore County, et al vs County Board Of Appeals

## C A S E H I S T O R Y

## INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Dispo	Entered
PLT 001	Peoples Counsel For Baltimore County	CT DO 09/12/96	06/19/95
	Attorney: 0005744 Demilio, Carole		
	Room 47, Courthouse		
	400 Washington Avenue		
	Towson, MD 21204		
	(410)887-2188		
	0029075 Zimmerman, Peter M		
	606 Baltimore Ave		
	Suite 204		
	Towson, MD 21204		
	(410)296-2424		
PLT 002	Rodgers Forge Community Assn Inc	CT DO 09/12/96	06/19/95
	Attorney: 0005744 Demilio, Carole		
	Room 47, Courthouse		
	400 Washington Avenue		
	Towson, MD 21204		
	(410)887-2188		
	0029075 Zimmerman, Peter M		
	606 Baltimore Ave		
	Suite 204		
	Towson, MD 21204		
	(410)296-2424		
PLT 003	Holston, Honey	CT DO 09/12/96	06/19/95
	Capacity : Individually		

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Attorney: 0005744 Demilio, Carole  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410)887-2188

0029075 Zimmerman, Peter M  
606 Baltimore Ave  
Suite 204  
Towson, MD 21204  
(410)296-2424

Type	Num	Name(Last,First,Mid,Title)	Dispo	Entered
PLT	004	Gerding, Donald Capacity : Individually Attorney: 0005744 Demilio, Carole Room 47, Courthouse 400 Washington Avenue Towson, MD 21204 (410)887-2188  0029075 Zimmerman, Peter M 606 Baltimore Ave Suite 204 Towson, MD 21204 (410)296-2424	CT DO	09/12/96 06/19/95
ITP	001	Jenkins, Mark P Attorney: 0006860 Borgerding, Francis X 409 Washington Ave Ste 600 Towson, MD 21204 (410)296-6820	CT DO	09/12/96 06/19/95
ITP	002	Jenkins, Adrienne		10/04/96
DEF	001	County Board Of Appeals Of Baltimore County 400 Washington Ave Rm 49 Towson, MD 21204	CT DO	09/12/96 06/19/95

## CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec
02/20/96	09:30A	003	yes	CIVI	TBA	01	/01	CON	C		07/31/96	P		12/14/95	

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## JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned,	J	06/19/95		

## DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
001000	Petition for Judicial Review jc #1 Petition of Peoples Counsel for Balto. Co., Rodgers Forge Comm. Assn. Inc., Honey Holston, and Donald Gerding for Judicial Review of the decision of the Co. Board of Appeals of Balto. Co. in the case of in the matter of Mark P. Jenkins, ET.AL. for special hearing on property located on the West side York road and Chumleigh Avenue (7100 York Road) 9th Election District, 4th Councilmanic District, Balto. Co. Board of Appeals # 95-95-SPH, fd. Copy sent to agency.	06/19/95	06/19/95	TBA	PLT001		07/31/96	JMG PS
001001	Answer jc 3 (rec'd 7/5/95)	08/02/95	08/02/95	TBA	ITP001		07/31/96	GC PS
002000	Certificate of Notice jc 2 (rec'd 6/26/95)	07/12/95	07/12/95	TBA	000		07/12/95	GC GC
003000	Amended Certificate of notice jc 4 (rec'd 7/26/95)	08/02/95	08/02/95	TBA	000		07/31/96	GC PS
004000	Transcript of Record from Adm Agency #5	08/16/95	08/16/95	TBA	000		07/31/96	LG PS
005000	Notice - Recpt of Record of Proceedings	08/16/95	08/16/95	TBA	PLT004	08/16/95	08/16/95	LG LG
006000	Notice - Recpt of Record of Proceedings	08/16/95	08/16/95	TBA	ITP001	08/16/95	08/16/95	LG LG
007000	Notice - Recpt of Record of Proceedings	08/16/95	08/16/95	TBA	PLT001	08/16/95	08/16/95	LG LG
008000	Notice - Recpt of Record of Proceedings	08/16/95	08/16/95	TBA	PLT002	08/16/95	08/16/95	LG LG
009000	Notice - Recpt of Record of Proceedings	08/16/95	08/16/95	TBA	PLT003	08/16/95	08/16/95	LG LG
010000	Notice - Recpt of Record of Proceedings	08/16/95	08/16/95	TBA	PLT004	08/16/95	08/16/95	LG LG
011000	Memorandum #6 (rec'd 9/15/95)	09/19/95	09/19/95	TBA	PLT001		09/19/95	ES ES
012000	Memorandum of Appellant #7 and Ms. Honey Holston and J. Donald Gerding, fd. (rec'd 9/15/95)	09/19/95	09/19/95	TBA	PLT002		07/31/96	ES PS

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User	ID
013000	Memorandum and Adrienne Jenkins, fd.	10/17/95	10/16/95	TBA	ITP001		10/17/95	ES	ES
014000	Reply Brief	12/07/95	12/06/95	TBA	PLT001		12/07/95	DFF	DFF
015000	Hearing Notice	12/14/95	12/14/95	TBA	000	12/14/95	12/14/95	JD	JD
016000	Open Court Proceeding February 20, 1996 - Hon. Barbara Kerr Howe. Hearing had. Dispo held Sub-Curia. Opinion and Order to be filed.	02/20/96		BKH	000		07/31/96	MK	PS
017000	* Statement and Order of Court REVERSING the decision of the Baltimore County Board of Appeals, etc., fd.	07/31/96	07/31/96	BKH	000	Granted	07/31/96	PS	PS
018000	* Order of Court GRANTING Appellant's Motion, fd.	07/31/96	07/31/96	BKH	000	Granted	07/31/96	PS	PS
019000	8/13/96 sent docket entries to Dept. of labor by hand	08/13/96		TBA	000		09/12/96	LC	PH
020000	Motion to Vacate Judgment filed by Mark and Adrienne Jenkins	09/12/96	09/05/96	BKH	000	Granted	09/12/96	PH	PH
021000	Notice of Appeal to COSA or COA * (Mark P. and Adrienne Jenkins). (8/161).	10/04/96	10/04/96	TBA	ITP001			DFF	DFF
022000	Order to proceed w/out prehearing conf. * (8/161).	12/05/96	12/03/96	TBA	000			DFF	DFF
023000	Original Record sent to COSA OF MARYLAND BY CERTIFIED MAIL ON JANUARY 24, 1997 WITH EXHIBITS FROM BOX 324.	01/24/97		TBA	000			AJ	AJ
024000	Mandate from the COSA affirming judgment	08/07/97		TBA	000			PH	PH

## TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
SLMR	Set List For Motions	CANCEL	09/27/96	22	no	no		MJVA D
EXPU	Exhibit Pickup Notic	OPEN	11/11/96	30	no	no		

10/11/97



03-C-95-005091 Date: 08/11/97 Time: 09:55

Page: 5

EXHIBITS

Line #	Marked	Code Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
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Offered By: DEF 001 County Board Of Appeals Of Ba

001 BOX 324	0	ZOANING EXHIBITS	0				
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UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1748

September Term, 1996

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MARK P. JENKINS, et ux.

v.

PEOPLE'S COUNSEL FOR BALTIMORE  
COUNTY, et al.

---

Moylan,  
Sonner,  
Plitt, Emory A., Jr. (Specially  
Assigned),

JJ.

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PER CURIAM

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Filed: June 27, 1997

On September 8, 1994, Drs. Mark and Adrienne Jenkins, the appellants, filed a Petition for a Special Hearing seeking a legal, non-conforming use designation for their property located at 7100 York Road, which was being partly rented for residential use and partly used by the appellants as a dental office. On November 2, 1994, having conducted a hearing on the petition, Lawrence E. Schmidt, the Zoning Commissioner for Baltimore County, ruled that the appellants' use of the property was a legal, non-conforming use. Representatives acting on behalf of the Rogers Forge Community Association and the People's Counsel for Baltimore County, the appellees, filed a de novo appeal with the County Board of Appeals of Baltimore County (the "Board"). On May 31, 1995, after having conducted a hearing, the Board granted approval of a dental office on the property as a legal non-conforming use subject to the restriction that the dental practice be operated by the owner of the property. The appellees appealed the Board's decision to the Circuit Court for Baltimore County. On July 31, 1996, Judge Barbara Kerr Howe reversed the Board's decision. Judge Howe's decision was later vacated, but then re-entered on September 9, 1996. On appeal to this Court, the appellants raise a single issue.

Whether the Circuit Court erred in reversing the decision of the Board to grant non-conforming use status for 7100 York Road?

The relevant facts in this appeal are undisputed. The appellants are owners of a house located at 7100 York Road, which is situated in a residential community known as Rodgers Forge. In 1976, the appellants purchased the property from Dr. Philip C.

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Deardorff. Dr. Deardorff had purchased the property in the early 1950's, and used the first floor of the property as a dental office and the second floor as a personal residence. From 1976 to 1988, the appellants used the property in an identical fashion.

The appellees do not contest that the appellants' use of the property as their primary residence and their dental office in this fashion was permissible. In 1988, however, the appellants moved their place of residence from the York Road property to a neighboring community. Thereafter, the appellants rented the second floor of the house for residential purposes and continued to maintain their dental office on the first floor.

It is the appellants' position that this use of the property is a legal, non-conforming use because 1) the pre-1955 Baltimore County Zoning Regulations permitted the property to be used as a residential rental property and dental office and 2) the pre-1955 regulations apply to this property. Specifically, the appellants argue that because Dr. Deardorff first opened his dental office in the early 1950's and the property has continually been used as a dental office since that time, the property is subject to the pre-1955 Baltimore County Zoning Regulations (B.C.Z.R.) for an "A" residence zone. Section III of the pre-1955 B.C.Z.R. provided in part:

A. Use Regulations: In any "A" Residence Zone, except as hereinafter expressly provided, no building or land shall be used and no building or structure shall be hereafter erected, altered, repaired or used except for one or more of the following uses:

. . .

1. . . . .

5. Home Occupations, provided that no sign or signs shall be displayed on the lot so used exceeding a total of two square feet in area, not projecting more than one foot beyond the building, and not illuminated.

6. Professional Office when situated in the building used by practitioner as his or her private dwelling, provided that no name plate shall be displayed exceeding two square feet in area. (emphasis supplied).

The appellants do not argue that their use of the property as a residential rental property and dentist office is permitted under post-1955 Baltimore County Zoning Regulations (B.C.Z.R.).

The appellees argued before both the Board and the Circuit Court that that when the appellants began using the building as a dental office and a rental property, as opposed to a dental office and their primary dwelling, the appellants were engaging in a use not permitted under either the pre-1955 or post-1955 version of the B.C.Z.R. The Circuit Court for Baltimore County, in an eight-page opinion, agreed with the appellees and reversed the decision of the Board. The Circuit Court set forth its holding as follows:

The Baltimore County Board of Appeals erroneously applied the law to the facts in this case. The appellees present use of 7100 York Road is not a legal, non-conforming use of a residential property under either the pre or post 1955 regulations regardless of the property's classifications as a home occupation or a professional office. The pre and post 1955 regulations require that the practitioner reside and practice in the same building for either a home occupation or a professional office. Appellees do not reside and practice in the same building. The decision of the Board is reversed. (emphasis

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supplied).

Initially, we fail to see how the appellants' argument concerning the permissibility of the use of their property as a residential rental property and dental office is bolstered by applying the pre-1955 B.C.Z.R. versus the post-1955 B.C.Z.R. Indeed, the appellants only argument as to the tactical benefit of using the pre-1955 B.C.Z.R. is as follows:

The post-1955 B.C.Z.R. definition of professional office use requires the professional office be "situated in the same dwelling used by any of the foregoing persons as his residence." The B.C.Z.R.'s choice of private dwelling in the pre-1955 zoning regulations versus residence is telling as the former indicates a requirement of ownership as opposed to the later which requires that the practitioner reside on the subject property. (emphasis in original)

We are unpersuaded by this argument. The pre-1955 and post-1955 B.C.Z.R.'s uses of "private dwelling" versus "residence" constitute a distinction without a difference.

Nevertheless, assuming arguendo that the appellants are correct that the pre-1955 B.C.Z.R. applies, we agree with the Circuit Court and hold that the appellants' current use of the property is not permitted as a professional office or a home office. The Board simply misapplied the law when it concluded that the appellants' use of the property was permitted as long as the owner of the property operated the dental office. Indeed, the clear language of the regulation requires the appellants to utilize the property as their private dwelling in order for their use of part of the property as a dental office to be permitted as either

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a home occupation or a professional office. Moreover, as even the appellants concede, this requirement was imposed by the post-1955 version of the B.S.Z.R.<sup>1</sup> Accordingly, in that the Board reached an erroneous conclusion of law, we affirm the decision of the Circuit Court. See People's Counsel v. Maryland Marine Manufacturing Co., Inc., 316 Md. 491, 496-7 (1989); Kassab v. Burkhardt, 34 Md. App. 699, 704 (1977).

**JUDGMENT AFFIRMED;  
COSTS TO BE PAID BY APPELLANTS.**

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1. The 1955 B.C.Z.R. changed the "A" zone to the R.6 zone, and in Article II, section 209.1, established that the uses permitted in the R.6 zone were controlled by those uses permitted in R.40 zones. Under section 200.7-8, which concerns the R.40 zone, the following is provided, in part:

Offices of a doctor or dentist but with no hospital facilities, and offices or studios of a lawyer . . . when these or offices of similar professions are situated in the same dwelling used by any of the foregoing persons as his residence. Not more than 25% of the floor area of the dwelling shall be used for offices or studios. . . .

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CIRCUIT COURT FOR BALTIMORE COUNTY  
Suzanne Mensh  
Clerk of the Circuit Court  
County Courts Building  
401 Bosley Avenue  
P.O. Box 6754  
Towson, MD 21285-6754  
(410)-887-2601, TTY for Deaf: (800)-735-2258

Case Number: 03-C-95-005091

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
400 Washington Ave  
Rm 49  
Towson, MD 21204



(7/31/96 -Barbara Kerr Howe, J.)

IN THE MATTER OF  
APPLICATION OF  
MARK P. JENKINS, ET UX.  
FOR SPECIAL HEARING ON  
PROPERTY LOCATED WEST SIDE  
OF YORK ROAD AND CHUMLEIGH  
AVENUE (7100 YORK ROAD)  
CBA No.: 95-95-SPH

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
CASE No.: 0003-C-95-5091

\* \* \* \* \*

### STATEMENT OF THE FACTS

Drs. Mark P. and Adrienne Jenkins (appellees) purchased the property in the Rodgers Forge community at 7100 York Road in 1976 from the previous owner, Dr. Dierdorf (sic). Dr. Dierdorf purchased the home sometime in the early 1950's and from that time his residence was on the second floor and his dental office was on the first floor. Appellees continued that arrangement until 1988. At that time, the second floor was no longer sufficient for appellees residential needs and they moved to a neighboring community. Appellees presently maintain the 7100 York Road property as a first floor dental office and a second floor residential rental unit.

Since the Jenkins no longer reside at the property, the Rodgers Forge Community Association became concerned that the property was no longer in conformance with zoning regulations. The regulations state that home occupations or professional

offices are permitted in certain residential zones if the owner of the business or practice resides at the property.

#### PROCEDURAL HISTORY

On September 8, 1994, the Jenkins filed a Petition for Special Hearing seeking non-conforming use status for their dental office. The Zoning Commissioner of Baltimore County, in his November 2, 1994 decision, declared the dental office a legal, non-conforming use of a property in a D.R. 5.5 (residential) zone. The Commissioner found that the property was in an "A" residential zone when Dr. Dierdorf (sic) opened his office and was in compliance with all regulations in effect at that time. In addressing the fact that the Jenkins no longer reside and practice in the same building, the Commissioner stated that he was "satisfied that the spirit and intent of the ordinance w[ould] be observed if the Petition . . . is approved." (Commissioner's opinion at p.6)

Representatives of the Community Association and the People's Counsel appealed the Commissioner's decision to the County Board of Appeals of Baltimore County (Board). On May 31, 1995, the Board affirmed the Commissioner's decision which granted non-conforming use status. People's Counsel and the Community Association appealed this decision to the Circuit Court

for Baltimore County on June 19, 1995. A hearing was held before the Honorable Barbara Kerr Howe on February 20, 1996.

### ISSUES PRESENTED

1. Whether the Board applied erroneous conclusions of law.
2. Whether the appellees present use of the property is a legal, non-conforming use.
3. Whether the pre or post 1955 zoning regulations should be used in order to determine question two; and whether the use of the property is a home occupation or a professional office.

### HOLDING

The Baltimore County Board of Appeals erroneously applied the law to the facts in this case. The appellees present use of 7100 York Road is not a legal, non-conforming use of a residential property under either the pre or post 1955 zoning regulations regardless of the property's classification as a home occupation or a professional office. The pre and post 1955 regulations require that the practitioner reside and practice in the same building for either a home occupation or a professional office. Appellees do not reside and practice in the same building. The decision of the Board is reversed.

### DISCUSSION

#### ISSUE #1-STANDARD OF REVIEW

The decision of the Board may be reversed if there was an

erroneous conclusion of law. People's Counsel v. Maryland Marine Manufacturing Co., Inc., 316 Md. 491, 496-7 (1989), Anne Arundel County v. 2020c West St., 104 Md.App. 320, 326-7 (1995). The various zoning regulations that could apply in this case all require that a practitioner reside and practice in the same dwelling unit. Since the fact that neither of the appellees reside in the building where they practice is undisputed, appellees are in clear violation of any and all relevant zoning regulations. This fact may not be overlooked simply because the appearance of the property has not changed.

#### ISSUE #2- NON-CONFORMING USE STATUS

The current Baltimore County Zoning Regulations (B.C.Z.R.) defines a non-conforming use as:

A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use. (Sec. 101).

In the case of Phillips v. Zoning Commissioner, 225 Md. 102, 109-110, 169 A.2d 410 (1961), the court states that "the spirit underlying zoning regulations is to restrict rather than increase nonconforming uses." In Jahnigen v. Staley, 245 Md. 130, 138, 225 A.2d 277 (1967), the Court of appeals states:

The right of a landowner to continue the same kind of

use to which the property was devoted on the critical date does not confer on him the right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use.

In the present case, appellee's subsequently changed their use of the building at 7100 York Road in 1988 when they began using the building as a dental office and a rental property and not as their primary dwelling. Since the appellees do not reside at 7100 York Road, the use of the property is not a legal non-conforming use under the current B.C.Z.R. and the use is not grandfathered under either the pre or post 1955 regulations.

**ISSUE #3- PRE OR POST 1955 REGULATIONS;  
HOME OCCUPATION OR PROFESSIONAL OFFICE**

Throughout the record of this case, no exact date is given for when Dr. Dierdorf first opened his dental office. The testimony states that it was sometime in the early 1950's. Assuming this to be true, the property would be subject to the pre-1955 regulations for an "A" residence zone. Section III of the pre-1955 B.C.Z.R., in part, stated:

A. Use Regulations: In any "A" Residence Zone, except as hereinafter expressly provided, no building or land shall be used and no building or structure shall be hereafter erected, altered, repaired or used except for one or more of the following uses:

5. Home Occupations, provided that no sign or signs shall be displayed on the lot so used exceeding a total of two square feet in area, not projecting

more than one foot beyond the building, and not illuminated.

6. Professional office when situated in the building used by practitioner as his or her private dwelling, provided that no name plate shall be displayed exceeding two square feet in area.

(Petitioner's exhibit #4.)

Appellees argue that the use is a professional office.

From the direct language of the regulation a professional office must be "in the building used by practitioner as his or her private dwelling." (Id.) A home occupation, by its name designation, also carries the same requirement. Under the pre-1955 regulations, appellees are not in compliance because they admittedly do not reside in the building where they practice dentistry.

People's Counsel exhibit #5 is a print out of two computer screens from the Maryland Department of Assessment and Taxation Real Property System for Baltimore County. Exhibit #5 shows that the primary structure on the property at 7100 York Road was built in 1956. (The same document also shows the correct spelling of the previous owner to be Philip C. Deardorff.) Assuming this to be an accurate date, the regulations that went into effect in 1955 would control. The "A" zone became an R.6 zone in 1955. Article II section 209 of the 1955 B.C.Z.R. states:

The following uses only are permitted [in an R.6 zone]:

209.1- Uses permitted and as limited in R.40 Zone;

Under the R.40 zone, sections 200.7-8 are relevant and read as follows:

200.7- Offices of a doctor or dentist but with no hospital facilities, and offices or studios of a lawyer ... when these or offices of similar professions are situated in the same dwelling used by any of the foregoing persons as his residence. Not more than 25% of the floor area of the dwelling shall be used for offices or studios ...

200.8- Home occupations, as heretofore defined in Section 101 ...

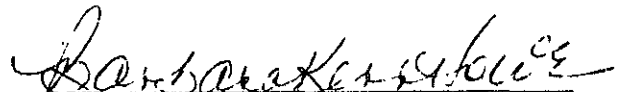
The 1955 revised regulations define home occupation, in part, as:

Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not have any exterior evidence, other than a permitted sign, to indicate that the building is being utilized for any purpose other than that of a dwelling . . .

As with the pre-1955 regulations, the 1955 regulations require that the practitioner reside in the same building where the home occupation or professional office is located.

Under either set of regulations and regardless of the professional office or home occupation designation the appellees current use of the property as a dental office and a rental property, without using it as their primary dwelling, is in violation of regulations for zones "A", R.6, and D.R. 5.5.

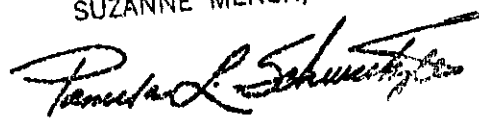
For all of the aforementioned reasons, the Baltimore County Board of Appeals erroneously applied the law to the facts in this case. The decision of the Board is hereby reversed.

  
Barbara Kerr Howe  
County Administrative Judge

CLERK TO NOTIFY:

*all counsel*

**True Copy Test**  
SUZANNE MENSCH, Clerk

  
Pamela L. Schuster  
Assistant Clerk



IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR  
FOR BALTIMORE COUNTY, RODGERS FORGE  
COMMUNITY ASSOCIATION, INC., HONEY  
HOLSTON, INDIVIDUALLY, AND  
DONALD GERDING, INDIVIDUALLY  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF THE  
APPLICATION OF MARK P. JENKINS, ET UX  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE WEST SIDE YORK ROAD  
CHUMLEIGH AVENUE (7100 YORK ROAD)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 95-95-SPH

\* \* \* \* \*

PROCEEDINGS BEFORE THE ZONING COMMISSIONER  
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Harry E. Buchheister, Jr., constituting the  
County Board of Appeals of Baltimore County, and in answer to the  
Petition for Judicial Review directed against them in this case,  
herewith return the record of proceedings had in the above-entitled  
matter, consisting of the following certified copies or original  
papers on file in the Office of Permits and Development Management  
and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND  
OFFICE OF PERMITS AND DEVELOPMENT MANAGEMENT  
OF BALTIMORE COUNTY

RECEIVED AND FILED

No. 95-95-SPH  
95 AUG 15 PM 3:02

September 8, 1994  
CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY

Petition for Special Hearing to approve a  
dental office in a residence in a D.R. 5.5  
zone filed by Francis X. Borgerding, Jr.,

RECORDED



Regulations - adopted 3/30/55

- 6 -Petition with signatures from patients
- 7 -A through D - Letters of support from neighbors & patients

People's Counsel Exhibits No. 1 -Portion of ADC map showing in yellow intersection of York & Chumleigh Rd

- 2 -Portion of Zoning Map
- 3 -Part of Map of Rogers Forge (commercial properties in yellow)
- 4 -Tax Map (portion)
- 5 -Tax Assessment Records for Subject Site
- 6 -Multiple Listing, 7100 York Road
- 7 -Baltimore County Zoning Regulations, 1975
- 8 -County Council Bill 105, 1982
- 9 -Master Plan excerpt, 1989-2000
- 10-Affidavit, Honey Holston
- 11-Photographic Map, Baltimore County Office of Planning & Zoning (subject property in yellow)

August 15, 1995      Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,

*Charlotte E. Radcliffe*

Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals of Baltimore  
County, Room 49, Basement - Old Courthouse  
400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

cc: People's Counsel for Baltimore County, et al  
Rodgers Forge Community Association, Inc.  
Honey Holston  
Donald Gerding  
Francis X. Borgerding, Jr., Esquire  
Mr. and Mrs. Mark P. Jenkins

FILED

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR  
FOR BALTIMORE COUNTY, RODGERS FORGE  
COMMUNITY ASSOCIATION, INC., HONEY  
HOLSTON, INDIVIDUALLY, AND  
DONALD GERDING, INDIVIDUALLY  
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CHUMLEIGH AVENUE (7100 YORK ROAD)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 95-95-SPH

\* \* \* \* \*

AMENDED CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Rogers Forge Community Association, Inc. and Honey Holston, 94 Dunkirk Road, Rogers Forge, MD 21212, and Donald Gerding, 335 Old Trail, Petitioners; Francis X. Borgerding, Esquire, DiNenna and Breschi, 409 Washington Avenue, Suite 600, Towson, MD 21204, Counsel for Mr. Jenkins; Mr. and Mrs. Mark P. Jenkins, 7100 York Road, Baltimore, MD 21212; a copy of which Amended Notice is

RECEIVED AND FILED

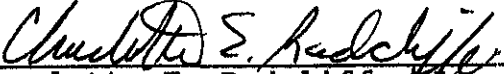
95 JUL 26 PM 12:15

CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY

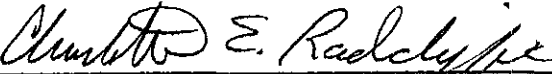
MICROFILMED

File No. 3-C-95-5091

attached hereto and prayed that it may be made a part hereof.

  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Amended Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Rogers Forge Community Association, Inc. and Honey Holston, 94 Dunkirk Road, Rogers Forge, MD 21212, and Donald Gerding, 335 Old Trail, Petitioners; Francis X. Borgerding, Esquire, DiNenna and Breschi, 409 Washington Avenue, Suite 600, Towson, MD 21204, Counsel for Jenkins; Mr. and Mrs. Mark P. Jenkins, 7100 York Road, Baltimore, MD 21212, this 26th day of July, 1995.

  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

RECORDED



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

July 26, 1995

Francis X. Borgerding, Jr., Esquire  
DINENNA AND BRESCHI  
Suite 600  
Mercantile-Towson Building  
409 Washington Avenue  
Towson, MD 21204

RE: Civil Action No. 3-C-95-5091  
MARK P. JENKINS, ET UX

Dear Mr. Borgerding:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on June 15, 1995, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-95-5091.

Enclosed is a copy of the Amended Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe  
Legal Secretary

Enclosure

cc: Mr. & Mrs. Mark P. Jenkins  
J. Carroll Holzer, Esquire  
Pat Keller /Planning  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon /PDM  
W. Carl Richards /PDM Docket Clerk /PDM  
Virginia W. Barnhart, County Attorney





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

July 26, 1995

Peter Max Zimmerman  
People's Counsel for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Civil Action No. 3-C-95-5091  
MARK P. JENKINS, ET UX

Dear Mr. Zimmerman:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Amended Certificate of Notice has been filed in the Circuit Court.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charlotte E. Radcliffe".

Charlotte E. Radcliffe  
Legal Secretary

Enclosure

c: Rodgers Forge Community Assn.  
c/o Honey Holston  
Donald Gerding



6-76 15  
IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR  
FOR BALTIMORE COUNTY, RODGERS FORGE  
COMMUNITY ASSOCIATION, INC., HONEY  
HOLSTON, INDIVIDUALLY, AND  
DONALD GERDING, INDIVIDUALLY  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF THE  
APPLICATION OF MARK P. JENKINS, ET UX  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE WEST SIDE YORK ROAD  
CHUMLEIGH AVENUE (7100 YORK ROAD)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 95-95-SPH

\* \* \* \* \*

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Rogers Forge Community Association, Inc. and Honey Holston, 94 Dunkirk Road, Rogers Forge, MD 21212, and Donald Gerding, 335 Old Trail, Petitioners; Francis X. Borgerding, Esquire, DiNenna and Breschi, 409 Washington Avenue, Suite 600, Towson, MD 21204, Counsel for Mr. Jenkins; Mr. and Mrs. Mark P. Jenkins, 7100 York Road, Baltimore, MD 21212; a copy of which Notice is attached

RECEIVED AND FILED  
53 JUN 25 PM 3:45

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hereto and prayed that it may be made a part hereof.

*Charlotte E. Radcliffe*

Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Rogers Forge Community Association, Inc. and Honey Holston, 94 Dunkirk Road, Rogers Forge, MD 21212, and Donald Gerding, 335 Old Trail, Petitioners; Francis X. Borgerding, Esquire, DiNenna and Breschi, 409 Washington Avenue, Suite 600, Towson, MD 21204, Counsel for Jenkins; Mr. and Mrs. Mark P. Jenkins, 7100 York Road, Baltimore, MD 21212, this 26th day of June, 1995.

*Charlotte E. Radcliffe*

Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

PETITION OF PEOPLE'S COUNSEL FOR BALTI- \*  
MORE COUNTY, RODGERS FORGE COMMUNITY ASSN., \*  
INC., HONEY HOLSTON, Individually, and \*  
DONALD GERDING, Individually

IN THE

FOR JUDICIAL REVIEW OF THE \*  
DECISION OF THE COUNTY BOARD OF \*  
APPEALS OF BALTIMORE COUNTY

CIRCUIT COURT

IN THE CASE OF: IN THE MATTER OF THE \*  
APPLICATION OF MARK P. JENKINS, et ux. \*  
FOR A SPECIAL HEARING ON PROPERTY \*  
LOCATED ON THE WEST SIDE YORK ROAD \*  
AND CHUMLEIGH AVENUE (7100 YORK ROAD) \*  
9th ELECTION DISTRICT \*  
4th COUNCILMANIC DISTRICT

FOR

BALTIMORE COUNTY

IN THE BALTIMORE COUNTY BOARD OF \*  
APPEALS, CASE NO.: 95-95-SPH

Civil Action No.

3-CAR-5091

\* \* \* \* \*

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, RODGERS FORGE COMMUNITY  
ASSOCIATION, INC., HONEY HOLSTON, Individually, and DONALD GERDING,  
Individually, hereby request judicial review of the May 31, 1995 County  
Board of Appeals' Opinion in the above case. PEOPLE'S COUNSEL, RODGERS  
FORGE COMMUNITY ASSOCIATION, INC., HONEY HOLSTON, Individually, and  
DONALD GERDING, Individually, were parties to the proceedings before the  
County Board of Appeals in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland  
Rules of Procedure.



PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

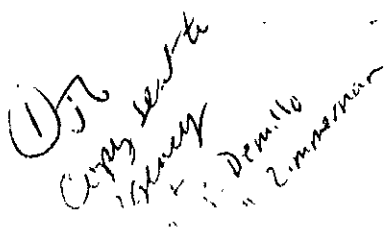


CAROLE S. DEMILIO  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-2188

RECORDED & INDEXED

55 JUN 23 PM 3:55

CLERK OF THE COURT



2000-06-23 14:55

RODGERS FORGE COMMUNITY ASSN., INC.

BY Honey Holston  
Honey Holston, President  
94 Dunkirk Road  
Baltimore, MD 21212  
(410) 377-4062

Honey Holston  
HONEY HOLSTON, Individually  
94 Dunkirk Road  
Baltimore, MD 21212  
(410) 377-4062

Donald Gerding  
DONALD GERDING, Individually  
335 Old Trail  
Baltimore, MD 21212  
(410) 825-0894

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of June, 1995, a copy of the foregoing Petition for Judicial Review was mailed to Francis X. Borgerding, Esquire, DiNenna and Breschi, 409 Washington Avenue, Suite 600, Towson, MD 21204, attorney for Mark P. Jenkins, et ux.

Peter Max Zimmerman  
PETER MAX ZIMMERMAN

(101.10)

IN THE MATTER OF THE  
THE APPLICATION OF  
MARK P. JENKINS, ET UX  
FOR A SPECIAL HEARING ON  
PROPERTY LOCATED ON THE WEST  
SIDE YORK ROAD AND CHUMLEIGH  
AVENUE (7100 YORK ROAD)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 95-95-SPH

\* \* \* \* \*

### O P I N I O N

This matter comes before the Board of Appeals as an appeal of a decision by the Zoning Commissioner granting a Special Hearing for approval of a dental office on a property zoned D.R. 5.5 as a legal, nonconforming use.

The property at 7100 York Road consists of a total area of 17,000 sq. ft., the first floor of which is used as a dental office and the second floor for residential uses. The property is located in the Rodgers Forge community of well-maintained townhouses and single detached houses.

Paul Lee, Professional Engineer, testified that the first floor is the dentist's office of Mark Jenkins and his wife, Adrienne, who have offered their professional services from the location for the past nineteen years. The second floor is an apartment which served as their residence.

Mr. Lee described the property as heavily landscaped and shielded from other properties and York Road by mature trees. A small sign advertises the dental office, which otherwise would not be recognized as anything but a residential property surrounded by detached houses. The location serves as an ideal buffer from commercial businesses on adjacent York Road properties.

Dr. Mark Jenkins testified that he purchased the property from a dentist who owned the property since the 1950's and from which a

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dental practice was provided for more than twenty years. In 1976, the Jenkins purchased the subject site for their place of residence and the continuation of the property's use as a dental office.

Numerous residents testified to the positive impact the Jenkins have had on the community for nineteen years, as 80 percent of their patients reside in Rodgers Forge and generally walk to the office. Several senior residents testified of the uninterrupted existence of the dental office and of its convenience. In addition to the professional activities of the dental office five days of the week from 9:30 a.m. to 5:30 p.m., the Jenkins also often serve routine needs of their patients and people suddenly in a crisis situation. In 1988, the family found the apartment no longer adequate for their needs and moved to the community of Anneslie, a half-mile away. They then rented out the second floor apartment to a residential tenant.

Several witnesses testified in opposition to the Petition. Elizabeth Heuisler, a resident of Rodgers Forge and secretary of the Rodgers Forge Community Association (RFCA), explained that she does not want future commercial activity at the location.

Honey Holston, President of RFCA, testified to the efforts being made to safeguard and enforce zoning regulations in the community of 1,000 homes. She expressed concern about the "plethora of rental homes" and houses with apartments in the Rodgers Forge community, and of zoning considerations that threaten the long-established advantages of Rodgers Forge. Ms. Holston expressed no dissatisfaction with the Jenkins, but is being alert to all violations of regulations. As President of RFCA, she stated that the Board of Directors of twenty-three residents decided to

pursue the subject zoning issue without consulting the membership as an ongoing responsibility expected of the directors.

Donald Gerding, an area resident of forty years and an active leader in area community associations, testified to his support for both commercial and residential sides of issues, as they arise. He sees potential commercial encroachment on the west side of York Road comparable to residential office uses south on York Road in Anneslie. Mr. Gerding emphasized that an owner-occupied property brings responsibility. The quality of life in Rodgers Forge is very good, but they face problems of changes that can come with commercial encroachment. The Master Plan sees no justification for additional commercial development along York Road. He foresees the dental office with a residence as a potential for further commercial intrusion. Mr. Gerding remarked that the site is landlocked in a manner that limits parking possibilities that will worsen as a commercial property.

The Petitioners seek a nonconforming use designation of their dental office so as to legitimize a use that has existed at the location for over forty years. A nonconforming use as defined in Section 101 of the Baltimore County Zoning Regulations (BCZR) is "a legal use that does not conform to a use regulation for the zone in which it is located," which in the instant case is the D.R. 5.5 zone. At times, the designation of a nonconforming use is applied to grandfather a use that otherwise would not be permissible. The nonconforming use may be contrary to the spirit and intent of the zoning regulation, but because they predate the date of new legislation, the use is permitted to continue.

An original "A" residential zone of the subject site during

the years of Dr. Dierdorf's ownership permitted a professional office when the dentist was also residing at the dwelling. Subsequent changes during following years, the R-6 zone and eventually the D.R. 5.5 zone, permitted the office of a dentist in the same dwelling used as a residence. In 1982, Bill 105 amended the regulation to limit the office space to no more than 25 percent of the total floor area of the building. The subject property in its nonconforming status was not required to comply to this regulation.

In this majority opinion of the Board, we are particularly persuaded that Section 104.1 places emphasis on the change in the "occupational use" of the office, and not the residential aspect of the nonconforming status. Section 104.1 clarifies that a nonconforming use may continue, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

The testimony has been unquestioned that Dr. Dierdorf resided on the property while he operated his dental practice, and the Jenkins continued the arrangement after they purchased the residential property with a first floor dentist's office. With the Jenkins' move from the apartment on the second floor to a new home close-by, should the services of the dental office cease? The second floor apartment remains as a residential purpose, and the property continues as an enhancing and valued asset to the community. Hundreds of residents of the surrounding neighborhoods testified or recorded their appreciation for the services of the

dental office.

The Board is persuaded that the present use of the subject property these many years should be continued, and the Petition for Special Hearing should be granted.

O R D E R

IT IS THEREFORE this 31st day of May, 1995 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing seeking approval of a dental office on the subject property, zoned D.R. 5.5, as a legal, nonconforming use, in accordance with Petitioners' Exhibit #1, be and the same is hereby GRANTED, subject to the following restrictions:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded; and
2. The nonconforming use is restricted to a dental practice operated by the owner of the property at 7100 York Road.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Acting Chairman

Harry E. Buchheister, Jr.  
Harry E. Buchheister, Jr.



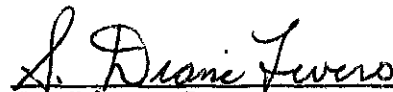
IN THE MATTER OF THE  
THE APPLICATION OF  
MARK P. JENKINS, ET UX  
FOR A SPECIAL HEARING ON  
PROPERTY LOCATED ON THE WEST  
SIDE YORK ROAD AND CHUMLEIGH  
AVENUE (7100 YORK ROAD)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 95-95-SPH

\* \* \* \* \*

DISSENTING OPINION

As a result of this member's evaluation of the testimony and evidence produced at the hearing, and as indicated during public deliberation, this Board member must respectfully dissent from the majority opinion; and would rule that the nonconforming use on the subject site is lost; and, therefore, that the Petition for Special Hearing should be denied.



S. Diane Levero  
County Board of Appeals

Date: May 31, 1995

RECORDED



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

May 31, 1995

Rodgers Forge Community Assn., Inc.  
c/o Ms. Honey Holston  
94 Dunkirk Road  
Rodgers Forge, MD 21212


RE: Case No. 95-95-SPH  
Mark P. Jenkins, et ux

Dear Ms. Holston:

Enclosed please find a copy of the majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of Ms. Levero's Dissenting Opinion.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Francis X. Borgerding, Jr., Esquire  
Mr. & Mrs. Mark P. Jenkins  
Donald Gerding  
People's Counsel for Balto. County  
Pat Keller  
Lawrence E. Schmidt  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director/ZADM  
Virginia W. Barnhart, County Attorney





County Board of Appeals of Baltimore County *JD 68*

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

May 31, 1995

Rodgers Forge Community Assn., Inc.  
c/o Ms. Honey Holston  
94 Dunkirk Road  
Rodgers Forge, MD 21212

RE: Case No. 95-95-SPH  
Mark P. Jenkins, et ux

Dear Ms. Holston:

Enclosed please find a copy of the majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of Ms. Levero's Dissenting Opinion.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Francis X. Borgerding, Jr., Esquire  
Mr. & Mrs. Mark P. Jenkins  
Donald Gerding  
People's Counsel for Balto. County  
Pat Keller  
Lawrence E. Schmidt  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director/ZADM  
Virginia W. Barnhart, County Attorney

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MAY 31 1995

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11-2-94

IN RE: PETITION FOR SPECIAL HEARING	* BEFORE THE
W/S York Road and Chumleigh Road	
(7100 York Road)	* ZONING COMMISSIONER
9th Election District	
4th Councilmanic District	* OF BALTIMORE COUNTY
Mark P. Jenkins, et ux	* Case No. 95-95-SPH
Petitioners	*

\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as 7100 York Road, located in the vicinity of Rodgers Forge in northern Baltimore County. The Petition was filed by the owners of the property, Mark P. and Adrienne Jenkins, seeking approval of a dental office on the subject property, zoned D.R. 5.5, as a legal, nonconforming use. The subject property and relief sought are more particularly described on the site plan submitted into evidence as Petitioner's Exhibit 1.

Appearing as the Petitioners were Mark and Adrienne Jenkins, property owners. Several residents of the surrounding community also appeared on their behalf. Also appearing in support of the Petition was Paul Lee, Professional Engineer. The Petitioners were represented by Francis X. Borgerding, Jr., Esquire. There were no Protestants present.

Testimony and evidence offered revealed that the subject property consists of a gross area of 16,966 sq.ft. and is improved with a two-story structure, the first floor of which is used as a dental office. As noted above, this property is located at the corner of York Road and Chumleigh Road adjacent to the long-established residential community of Rodgers Forge. The Rodgers Forge community is primarily comprised of townhomes and is a well-maintained neighborhood which has existed for many years.

ORDER RECEIVED FOR FILING

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The property's location at the intersection of York Road and Chumleigh Road, makes it an ideal buffer from the commercial activity which abuts York Road near this locale and the high volume of traffic which utilizes that roadway.

On behalf of the Petitioners, Mr. Lee testified that the building is presently devoted to two uses. On the first floor is a dentist's office which is operated by Mr. and Mrs. Jenkins, both of whom are licensed dentists who have operated their practice from this location for the past 18 years. The second floor is an apartment which is leased for residential purposes. The building also contains a basement which is used for storage purposes only. The dwelling also features a concrete patio to the rear and a small porch to the front. Although a small sign on the York Road side of the property advertises the existence of the dental office, the property casts a residential appearance. Moreover, as the photographs submitted show, the property is heavily landscaped and the building is shielded from neighboring properties and York Road traffic by many mature trees.

As to the history of this site, Dr. Mark Jenkins testified that he has owned the property for the past 18 years. He testified that he and his wife have operated their dental practice from this location since their purchase of the property and that there has never been a period of time during which their practice was discontinued or abandoned. Moreover, for the first 12 years of their ownership, Mr. & Mrs. Jenkins resided in the apartment on the second floor of the dwelling. However, several years ago, the need for larger living quarters arose as their family grew and the Jenkins relocated to the Anneslie community which is located not far from the subject site. The Anneslie community is comprised mainly of single family dwellings.

ORDER RECEIVED FOR FILING

Date

By

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Further testimony indicated that Mr. & Mrs. Jenkins purchased the subject property from a Dr. Dierdorf, who had owned the property since the early 1950s. Dr. Dierdorf was also a dentist and had conducted his practice from this location for 22 years. The uncontradicted testimony offered was that there has been no discontinuance of the dental office at this location, either by Dr. Dierdorf, or the Jenkins since it was opened in the 1950s.

As to the present office, this is surely a neighborhood practice which provides a needed service to the surrounding residential community. Dr. Jenkins testified that 80% of his patients reside in Rodgers Forge and most walk to his office. The present and past use of this property brings to the mind of this Zoning Commissioner a simpler time when many communities had a neighborhood dentist, doctor, lawyer or other professional. Clearly, the professional activity which goes on here is not high profile in nature. The practice is designed to serve the routine needs of its patients. Dr. Jenkins, in fact, related a story when recently a child who lives in Rodgers Forge fell from his bike and suffered injuries to his dentition. A quick phone call to Dr. Jenkins by the boy's family resulted in Dr. Jenkins arriving and opening his office on a Saturday afternoon so that the child could receive emergency treatment. It is clear that the Rodgers Forge community will be poorer if this practice cannot remain at this location. Testimony was that the office is open Monday through Friday, from 9:30 AM to 5:30 PM and that an average of 10 to 12 patients are seen per day. There are also two staff employees who are present daily.

The Petitioners now come before me seeking a nonconforming use designation of the dental office so as to legitimize this use. One wonders why the propriety of this operation has been brought into question, since

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it has existed at this location for many years, apparently without complaint. Moreover, as noted above, the office clearly addresses a real need in the Rodgers Forge community.

In any event, a nonconforming use is defined in Section 101 of the B.C.Z.R. as "a legal use that does not conform to a use regulation for the zone in which it is located or to a specific regulation applicable to such a use..." Often, the designation of a nonconforming use is utilized to grandfather an otherwise illegal use. Moreover, nonconforming uses are regulated in Section 104 of the B.C.Z.R. Therein it is provided that a nonconforming use cannot be abandoned or discontinued. Other limitations are provided as to the expansion of nonconforming uses.

Generally, nonconforming uses are not favored at law. See McKemy v. Baltimore County, Maryland, 39 Md. App. 257, 385 A2d 96 (1978). In many cases, they are considered to be contrary to the spirit and intent of the zoning ordinance and are permitted only because of they predate the effective date of the prohibiting legislation.

Zoning first came to Baltimore County in 1945 when the County Commissioners adopted the first set of zoning regulations. Within those regulations, seven different zones were created to regulate residential, commercial and industrial uses. The subject site, now zoned D.R. 5.5, was at that time zoned "A" a residential classification. Moreover, the "A" zoning classification permitted a professional office when same was situated in the building used by the practitioner as his or her private dwelling, provided that no name plate exceeding 2 sq.ft. in area was displayed. Apparently, Dr. Dierdorf opened his office at this location when this revision of the B.C.Z.R. was in effect. Clearly, his professional office

ORDER RECEIVED FOR FILING

Date

By

was permitted at this location pursuant to the regulations in effect at that time.

The B.C.Z.R. were comprehensively amended and re-enacted in 1955. In that time, different zoning classifications were adopted, including the R-6 designation which eventually became D.R. 5.5. In the R-6 zone, offices of a doctor or dentist were permitted in the same dwelling used by the professional as his residence. However, an additional requirement was added that not more than 25% of the total floor area of the structure could be devoted to the office use. A substantially similar regulation was readopted and exists in the present version of the B.C.Z.R.

In the instant case, the Petitioners are not required to comply with that standard which limits the professional office to 25% of the total floor area of the structure. Clearly, the dental office existed prior to the effective date of the zoning regulations enacted in 1955 when the 25% floor area requirement was initially included in the professional office definition. It is clear the subject dental office was permissible and complied with the regulations in effect in the early 1950s when the office was opened. The testimony and evidence were uncontradicted that Dr. Dierdorf resided on this property while he operated his practice. The Jenkins continued this arrangement when they acquired the property. The sole troubling aspect of this case is the effect of the Jenkins' relocation of their residence to the Anneslie community some seven years ago. It is clear that the Jenkins no longer reside on the subject property; however, it is to be noted that the second floor apartment continues to be rented and used for residential purposes. Based on the uncontradicted testimony and evidence presented, I am satisfied that the spirit and intent of the ordinance will be observed if the Petition for Special Hearing is approved.

ORDER RECEIVED FOR FILING

Date

By



I am particularly mindful of the needed services which this office provides to the surrounding residential community. Moreover, the character of the site and continued residential use of the building is of particular note. Although not occupied by the Jenkins as their home, the property continues to have a residential character in appearance and is, in fact, utilized for residential purposes.

This Petition is filed pursuant to Section 500.7 of the B.C.Z.R. which provides the Zoning Commissioner with broad authority to conduct such hearings and pass such orders thereon as are necessary for the proper enforcement and interpretation of the regulations. Moreover, Article 1.B of the B.C.Z.R. regulates the uses and standards applicable for all D.R. zones. Essentially, this Article provides that the D.R. zones are created so as to foster a greater variety of housing types and allow flexibility in development of residential communities. In my view, the present use of the subject property as outlined above meets the criteria established within the B.C.Z.R. and furthers the goals stated therein. For all of these reasons, I am persuaded that the spirit and intent of the ordinance will be observed if the Petition for Special Hearing should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 2nd day of November, 1994 that the Petition for Special Hearing seeking approval of a dental office on the subject property, zoned D.R. 5.5, as a legal, nonconforming use, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

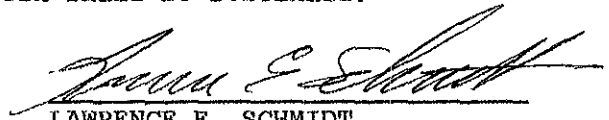
- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such

ORDER RECEIVED FOR FILING

Date

By

time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.



LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING

Date 11/2/94

By [Signature]

RECEIVED 11/2/94

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 112 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

November 2, 1994

Francis X. Borgerding, Jr., Esquire  
409 Washington Avenue, Suite 600  
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING  
W/S York Road and Chumleigh Road  
(7100 York Road)  
9th Election District - 4th Councilmanic District  
Mark P. Jenkins, et ux - Petitioners  
Case No. 95-85-SPH

Dear Mr. Borgerding:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

cc: Drs. Mark and Adrienne Jenkins  
7100 York Road, Baltimore, Md. 21212

People's Counsel

File



RE: PETITION FOR SPECIAL HEARING \* BEFORE THE  
7100 York Road, N/S Chumleigh Road, \* ZONING COMMISSIONER  
55' W of c/l York Road, 9th \* OF BALTIMORE COUNTY  
Election Dist., 4th Councilmanic \*  
Mark P. Jenkins and Ardrienne Jenkins \*  
Petitioners \* CASE NO. 95-95-SPH

\* \* \* \* \*

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

*Peter Max Zimmerman*

PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

*Carole S. Demilio*

CAROLE S. DEMILIO  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of September, 1994, a copy of the foregoing Entry of Appearance was mailed to Francis X. Borgerding, Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21204, attorney for Petitioners.

*Peter Max Zimmerman*

PETER MAX ZIMMERMAN

RECORDED

#96



# Petition for Special Hearing

95-95-SPH

to the Zoning Commissioner of Baltimore County

for the property located at 7100 York Rd., Baltimore, MD 21212  
which is presently zoned D.R. 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve a non-conforming use status for a dental office in a residence in a D.R. 5.5 zone

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City

State

Zipcode

Legal Owner(s).

Mark P. Jenkins

(Type or Print Name)

Signature

Adrienne Jenkins

(Type or Print Name)

Signature

7100 York Road

Address

Phone No.

Baltimore

MD

21212

City

State

Zipcode

Name, Address and phone number of representative to be contacted.

Francis X. Borgerding, Jr.

Name

409 Washington Ave., Ste. 600

Address

Towson, MD 21204

296-6820

Phone No.

Attorney for Petitioner:

Francis X. Borgerding, Jr.

(Type or Print Name)

Signature

296-6820

409 Washington Ave., Ste. 600

Address

Phone No.

Towson

MD

21204

City

State

Zipcode

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

1 hr.

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

MD

DATE

9/8/94

ORDER RECEIVED FOR FILING

Date

By



MICROFILMED

*Paul Lee, P.E.*

*Paul Lee Engineering Inc.*

*304 W. Pennsylvania Ave.*

*Towson, Maryland 21204*

*410-821-5944*

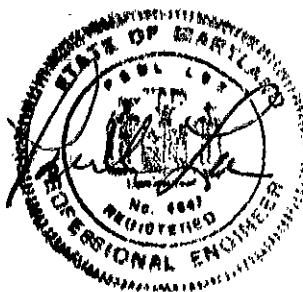
95-95-SPH

DESCRIPTION

7100 YORK ROAD  
ELECTION DISTRICT 9C4  
BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the North side of Chumleigh Road, said point also being located Westerly 55 feet ± from the center of York Road; thence binding on the North side of Chumleigh Road (1) N 78°08'00" W 125 feet; thence leaving said North side of Chumleigh Road (2) N 11°52'00" 70.00 feet, thence (3) S 78°08'00" E 150.00 feet to the West side of York Road; thence binding on the West side of York Road (4) S 11°52'00" W 45.00 feet and by a curve to the right (5) R=25.00 feet, L=39.27 feet to the point of beginning.

Containing 10,366 square feet of land, more or less.



MICROFILMED

#96

Engineers — Surveyors — Site Planners

**CERTIFICATE OF POSTING**  
**ZONING DEPARTMENT OF BALTIMORE COUNTY**  
**Towson, Maryland**

95-95-SPH

District 9th Date of Posting 9/23/94

Posted for: Special Hearing

Petitioner: Mark & Adrienne Lonkin's

Location of property: 7100 York Rd, N/S

Location of Signs: Facing road way, on property being zoned

Remarks: \_\_\_\_\_

Posted by M. Healy Date of return: 9/30/94  
Signature

Number of Signs: 1



# NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 108 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #98-85-SPH  
(Item 98)

7100 York Road  
N/S Chumleigh Road, 55'  
W of c/o York Road  
9th Election District  
4th Councilmanic  
Petitioner(s):

Mark P. Jenkins and  
Ardienne Jenkins  
Hearing: Wednesday,

October 12, 1994 at 2:00  
p.m. in Rm. 118, Old  
Courthouse.

Special Hearing to approve  
a non-conforming use status for  
a dental office in a residence.

LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

NOTE: (1) Hearings are Handi-  
capped Accessible for special ac-  
commodations. Please Call  
887-3353.

(2) For information concern-  
ing the File and/or Hearing, Please  
Call 887-3391.  
9/288 Sept. 22.

# CERTIFICATE OF PUBLICATION

TOWSON, MD.,

9/22, 1994

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/22, 1994

THE JEFFERSONIAN,

A. Henrichsen

LEGAL AD. - TOWSON

~~Publication~~





Baltimore County  
Zoning Administration &  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

95-95-SPH

Account: R-001-6150

Number

Date

9/8/94

Item: 96

Taken In:  
By: JWDK

Mark P. Jenkins - 7100 York Rd

040 - Comm. Sp. Hearing - \$250.00

050 - Sign posting - \$35.00

Total - \$285.00

MICROFILMED

03A0380273MICRC

\$285.00

BA COLD#32AND9-08-94

Please Make Checks Payable To: Baltimore County

Cashier Validation



**CERTIFICATE OF POSTING**  
**ZONING DEPARTMENT OF BALTIMORE COUNTY**  
Townson, Maryland

95-95-SPH

District: 9th

Date of Posting: 12/27/94

Posted for: Appeal

Petitioner: Mark & Adrienne Jenkins

Location of property: 7100 York Rd, N/S Chamleigh

Location of Signs: Facing road way, on property being appealed for  
Zoning

Remarks: \_\_\_\_\_

Posted by

M. Stealy  
Signature

Date of return:

12/30/94

Number of Signs:

1

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be accessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 96

Petitioner: Mark P. Jenkins

Location: 7100 York Road

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Francis X. Borgerding, Jr.

ADDRESS: 409 Washington Ave, Ste 600  
Towson, MD 21204

PHONE NUMBER: 296-6820

AJ:ggs

(Revised 04/09/93)



Printed on Recycled Paper

NOT FILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

SEPTEMBER 16, 1994

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in  
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204  
or  
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-95-SPH (Item 96)

7100 York Road

N/S Chumleigh Road, 55' W of c/l York Road

9th Election District - 4th Councilmanic

Petitioner(s): Mark P. Jenkins and Adrienne Jenkins

HEARING: WEDNESDAY, OCTOBER 12, 1994 at 2:00 p.m. in Room 118, Old Courthouse.

Special Hearing to approve a non-conforming use status for a dental office in a residence.

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon  
Director

cc: Mark and Adrienne Jenkins  
Francis X. Borgerding, Jr., Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

RECEIVED





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

Hearing Room - Room 48  
Old Courthouse, 400 Washington Avenue

January 31, 1995

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 95-95-SPH

MARK P. JENKINS, ET UX  
W/s York Road and Chumleigh Road  
(7100 York Road)  
9th Election District  
4th Councilmanic District

SPH -Approval of a dental office on subject property, zoned D.R. 5.5, as legal, nonconforming use.

11/02/94 -Z.C.'s Order in which Petition for Special Hearing was GRANTED.

ASSIGNED FOR: THURSDAY, APRIL 27, 1995 at 10:00 a.m.

cc: J. Carroll Holzer, Esquire Counsel for Appellants /Protestants  
Rodgers Forge Community Assn.  
Inc. /Honey Holston Appellants /Protestants

Francis X. Borgerding, Jr., Esq. Counsel for Petitioners  
Mr. & Mrs. Mark P. Jenkins Petitioners

People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer  
Administrative Assistant

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

RECORDED



Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

OCT. 05 1994

Francis X. Borgerding, Jr.  
409 Washington Ave., Suite 600  
Towson, Maryland 21204

RE: Item No. 96Ca se No. 95-95

Petitioner: Jenkins

Dear Petitioner:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on September 08, 1994 and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

Very truly yours,

W. Carl Richards, Jr.  
Zoning Supervisor

MICROFILMED



**Maryland Department of Transportation  
State Highway Administration**

O. James Lighthizer  
Secretary  
Hal Kassoff  
Administrator

9-14-94

Ms. Julie Winiarski  
Zoning Administration and  
Development Management  
County Office Building  
Room 109  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Baltimore County  
Item No.: 496 (MJK)

Dear Ms. Winiarski:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

*Bob Small*

*for* David Ramsey, Acting Chief  
Engineering Access Permits  
Division

BS/

My telephone number is \_\_\_\_\_

Maryland Relay Service for Impaired Hearing or Speech  
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717  
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

MICROFILMED



BALTIMORE COUNTY, MARYLAND  
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director                      DATE: September 26, 1994  
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief  
Developers Engineering Section

RE: Zoning Advisory Committee Meeting  
for September 26, 1994  
Item No. 96

The Developers Engineering Section has reviewed the subject zoning item. The issue of parking for the office use should be adequately addressed.

RWB: 6W

Baltimore County Government  
Fire Department



700 East Joppa Road  
Towson, MD 21286-5500

Office of the Fire Marshal  
(410)887-4880

DATE: 09/28/94

Arnold Joplin  
Director  
Training Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204  
CALL 943-1105

RE: Property Owner: SEP BELOW

LOCATION: SEP BELOW

Item No.: SEP BELOW

Training Agenda:

Remarks:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 'Life Safety Code', 1991 edition prior to occupancy.

IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 92, 93 AND 94.

SEP. 28 1994

REVIEWER: M. ROBERT E. SAUERWALD  
Fire Marshal (Office) (410) 887-4880, MS-1105

SEE FILE

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT  
INTER-OFFICE CORRESPONDENCE

TO: ZADM *Joyce Watson*  
FROM: DEPRM  
Development Coordination  
SUBJECT: Zoning Advisory Committee  
Agenda: *Sept. 19*

DATE: *9/22/94*

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s: *90*

*95*  
*96*  
*97*  
*98*  
*99*  
*88*

LS:sp

LETTY2/DEPRM/TXTSBP

SEP 28 1994

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Zoning Administration and  
Development Management

DATE: September 15, 1994

FROM: Pat Keller, Director  
Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s):

Item Nos. 90, 93, 94, 95, 96, 97, 98 and 99.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by:

Jeffrey W. Long

Division Chief:

Carol L. Kerns

PK/JL:lw

Item Number: 96  
Planner: MJK  
Date Filed: 9-8-94

P E T I T I O N   P R O C E S S I N G   F L A G

This petition has been accepted for filing, after an initial review, and has been placed on the agenda for the zoning advisory committee. However, the following items were found to be missing or incomplete when the petition was included on the agenda by Sophia. A copy of this "flag" will be placed in the case file for the Zoning Commissioner's review. The planner that accepted the petition for filing has the option of notifying the petitioner and/or attorney prior to the hearing or Zoning Commissioner's review of the petition regarding the items noted below. If the petitioner/attorney is contacted by the planner, it is the petitioner's ultimate decision and responsibility to make a proper application, address any zoning conflicts, and to file revised petition materials if necessary. Delays and unnecessary additional expenses may be avoided by correcting the petition to the proper form.

Need an attorney

✓

The following information is missing:

- Descriptions, including accurate beginning point
- Actual address of property
- Zoning
- Acreage
- Plats (need 12, only        submitted)
- 200 scale zoning map with property outlined
- Election district
- Councilmanic district
- BCZR section information and/or wording
- Hardship/practical difficulty information
- ✓ ~~Owner's signature (need minimum 1 original signature) and/or~~
- ~~printed name and/or address and/or telephone number~~
- Contract purchaser's signature (need minimum 1 original
- signature) and/or printed name and/or address
- Signature (need minimum 1 original signature) and/or
- printed name and/or title of person signing for legal
- owner/contract purchaser
- Power of attorney or authorization for person signing for
- legal owner and/or contract purchaser
- Attorney's signature (need minimum 1 original signature)
- and/or printed name and/or address and/or telephone number
- Notary Public's section is incomplete and/or incorrect
- and/or commission has expired

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

December 21, 1994

Francis X. Borgerding, Jr., Esquire  
409 Washington Avenue, Suite 600  
Towson, MD 21204

RE: Petition for Special Hearing  
W/S York Road and Chumleigh Road  
(7100 York Road)  
9th E.D.-4th C.D.  
Mark Jenkins, et ux-Petitioners  
Case No. 95-95-SPH

Dear Mr. Borgerding:

Please be advised that an appeal of the above-referenced case was filed in this office on December 1, 1994 by J. Carroll Holzer. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Eileen O. Hennegan at 887-3353.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arnold Jablon/et", is written over the typed name.

ARNOLD JABLON  
Director

AJ:eoh

c: Peoples Counsel



APPEAL

Petition for Special Hearing  
W/S York Road and Chumleigh Road  
(7100 York Road)  
9th Election District - 4th Councilmanic District  
Mark P. Jenkins, et ux-PETITIONER  
Case No. 95-95-SPH

Petition(s) for Special Hearing

Description of Property

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Plat to Accompany Petition  
2 - Zoning Regulations and Restrictions for  
Baltimore County  
3 - Baltimore County Zoning Regulations,  
adopted March 30, 1955  
4A-4J- 10 Photographs  
5 - Copy of Deed  
6 - List of residents in support of petition

Zoning Commissioner's Order dated November 2, 1994 (GRANTED)

Notice of Appeal received on December 1, 1994 from J. Carroll Holzer,  
Esquire

c: Mr. and Mrs. Mark P. Jenkins, 7100 York Road, Balto. 21212  
Francis X. Borgerding, Jr., Esquire, 409 Washington Ave., Suite  
600, Towson 21204  
J. Carroll Holzer, Holzer and Lee, 305 Washington Avenue, Towson  
21204  
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Supervisor  
Docket Clerk  
Arnold Jablon, Director of ZADM

MICROFILMED

MARK P. JENKINS, ET UX

95-95-SPH

W/S York Road and Chumleigh Avenue  
(7100 York Road)

9th Election District

RE: Petition for Special Hearing

---

No. 95-95-SPH

September 8, 1994	Petition for Special Hearing to approve a dental office in a residence in a D.R. 5.5 zone filed by Francis X. Bergerding, Jr., Esquire, on behalf of Mark P. and Adrienne Jenkins.
October 12	Hearing held on Petition by the Zoning Commissioner.
November 2	Order issued by the Zoning Commissioner wherein Petition for Special Hearing was GRANTED with one restriction.
December 1	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Rodgers Forge Community Association, Inc. and Honey Holston, individually.
April 27, 1995	Hearing before the Board of Appeals.
May 18	Deliberation completed.
May 31	Opinion and Order issued by the majority of the Board in which the Petition for Special Hearing was GRANTED with restrictions. Dissenting Opinion by S. Diane Levero.
June 15	Petition for Judicial Review filed in the CCT by People's Counsel for Baltimore County, Rodger's Forge Community Assn., Inc., Honey Holston, Individually, and Donald Gerding, Individually. (copy rec'd by CBA 6/23/95).
June 26	Certificate of Notice filed in the CCT.
July 26	Amended Certificate of Notice sent to interested parties.
August 15	✓ Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.
July 31, 1996	✓ E Opinion issued by the CCT for Balto. Co.; decision of the CBA was REVERSED (Barbara Kerr Howe, J.)
September 12	Order issued by the CCT to reissue the 7/31/96 Order so that 30-day appellate period now runs from 9/12/96 (Barbara Kerr Howe, J.)
August, 1996	Notice of Appeal filed in the CSA by Bergerding.
June 27, 1997	Opinion issued by the CSA; decision of the CCT is AFFIRMED (Moylan, Sonner, Plitt, Emory, JJ.)

MAILED



1/31/95 -Notice of Assignment for hearing scheduled for Thursday,  
April 27, 1995 at 10:00 a.m. sent to following:

J. Carroll Holzer, Esquire  
Rodgers Forge Community Assn.  
Inc. /Honey Holston  
Francis X. Borgerding, Jr., Esq.  
Mr. & Mrs. Mark P. Jenkins  
People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

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4/27/95 -Matter concluded before Board. To be scheduled for deliberation and  
parties notified by Notice.

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5/09/95 - Notice of Deliberation sent to parties; deliberation scheduled for  
Thursday, May 18, 1995 at 10:00 a.m. (H.B.M.)



# County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

May 9, 1995

## NOTICE OF DELIBERATION

Having concluded this case on April 27, 1995, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

MARK P. JENKINS, ET UX  
CASE NO. 95-95-SPH

DATE AND TIME : Thursday, May 18, 1995 at 10:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

---

cc: J. Carroll Holzer, Esquire      Counsel for Appellants /Protestants  
Rodgers Forge Community Assn.  
Inc. /Honey Holston      Appellants /Protestants

Francis X. Borgerding, Jr., Esq.      Counsel for Petitioners  
Mr. & Mrs. Mark P. Jenkins      Petitioners

People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
Donald Gerding

Kathleen C. Weidenhammer  
Administrative Assistant

H.B.M. /copied



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Mark P. Jenkins, et ux  
Case No. 95-95-SPH

DATE : May 18, 1995 @ 10:00 a.m.

BOARD /PANEL : William T. Hackett (WTH)  
S. Diane Levero (SDL)  
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Weidenhammer  
Administrative Assistant

Among those present at the deliberation was the Petitioner and People's Counsel for Baltimore County.

**PURPOSE** --to deliberate issues and matter of petition presented to the Board; testimony and evidence taken at hearing of April 27, 1995. Written Opinion and Order to be issued by the Board.

**WTH:** We are here this morning for public deliberation on Case No. 95-95-SPH, Mark P. Jenkins. As is legislated by law, we must publicly deliberate this special hearing for the approval of a dentist's office on the subject site zoned D.R. 5.5 as a legal nonconforming use. I will reserve my statements and defer to Mr. Buchheister.

**HEB:** This case brings the question of when home office use in a D.R. zone versus simple office use when the owner lives elsewhere. The subject property, from testimony of a number of people, is well-maintained and, except for a very small sign, is hardly recognized as a residence with dental office surrounded by detached homes. Use as a home office at this site traces back to the '50s by a Dr. Dierdorf, a dentist, and the occupancy from 1976 to 1988 by the Jenkins, husband and wife, both dentists, continuing the dental practice when the Petitioner moved his family from the home office's upstairs apartment to a larger house several blocks away. To date, the dentist office use has been uninterrupted. Testimony by one of the neighbors, a long-time neighbor of some 38 years, Mrs. Clarke, indicated that even Dr. Dierdorf also moved from the apartment to another house before he sold to Dr. Jenkins; estimate that 80 percent of the patients are from Rodgers Forge community and other nearby communities. Numerous residents testified to the positive impact the Jenkins have had for 18 years, often times responding during hours when the

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office was closed to emergencies that may have arisen.

Protestants are concerned by commercial encroachment, already extensively evidenced along York Road. Also concerned about a plethora of rental homes and rental apartments in houses that may have negative effects on property values and human values in Rodgers Forge community. Mrs. Holston, RFCA, emphasized they don't want another commercial activity at the residential property in the future. Protestants didn't have any problems with the Jenkins, but are concerned by their violation of regulations. Mr. Gerding noted the York Road side of Anneslie and homes there converted to office use and is alarmed that owner-occupied properties versus saturation of absentee ownership.

In consideration of the support of many of the residents of the community and the uninterrupted dental practice, even after Dr. Jenkins moved in 1988, without protest from 1988 to 1995, it is my feeling that the special hearing for approval of a dental office on the subject property be granted, subject to the understanding that the nonconforming use is restricted to a dental service rendered by the property owner.

**SDL:** Section 104.1 states that a nonconforming use may continue only until there is any change from such nonconforming use to any other use, in which case the right to continue or use such nonconforming use terminates. Petitioner argues that use has not changed. Use of first floor as office has been continuous, and second floor used as residence. However, use has clearly changed from owner-occupied use under right grandfathered in as nonconforming use to straight office use with second floor as rental. Home occupation to straight office has terminated nonconforming use; would deny Petition for Special Hearing.

**WTH:** I too refer to 104.1 in trying to make decision on this piece of property which has been aptly described by Mr. Buchheister. What I concentrated on is the fact that a nonconforming use, and I think use is the key word, may continue / referenced change from such nonconforming use to any other use whatsoever or any abandonment of use -- do not see any change in the use of this property since apparently the day it was built. Has been a dental office, has been a residence, in most cases for owner but not necessarily. Use does not say owner must be one who lives there; one floor used for office, rest is residential. As long as that continues, I think use is a nonconforming use and would grant the special hearing; approval of dental office on subject site as legal


Deliberation /Mark P. Jenkins, et ux Case No. 95-95-SPH

nonconforming use.

Closing statement by Chairman Hackett: The Board has deliberated in public; we will find that we have a majority opinion and a dissent, and we will issue same in the very near future.

Note: appellate period runs from date of written Opinion and Order and not from today's date.

Respectfully submitted,

  
Kathleen C. Weidenhammer  
Administrative Assistant

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director                      DATE: April 1, 1998  
Permits & Development Management

FROM: Charlotte E. Radcliffe *CR*  
County Board of Appeals

SUBJECT: Closed File: 95-95-SPH  
MARK P. JENKINS, ET UX  
9th E; 4th C

As no further appeals have been taken since the Court of Special Appeal's June, 1997 Order, we are hereby closing the Board's file in this matter. The original file and exhibits were returned to your office by John Almond, Records Manager /Cct on February 17, 1998.

Attachment (CBA Case File No. 95-95-SPH)

Chris

Chris uses street talk? - yes

Dept closes case

Rebuttal

Detective<sup>Wyn</sup> Brady Baldo P.D.  
C.T.S.D. - Robbery

non of CM on 6/23/95 @ 8:58 AM

Prior Consistent Statement - list of  
the test. + inked - 720 AM -

One of the subjects stated - you pulled it out -  
you'd be use it

→ 6/28 non of Justin Bell

Did I tell you La Maxwell  
wanted to rob him?

happen Tell you La robbery about to

Chris

Detective

took the notes -

word product gets  
destroyed

Peoples Counsel vs. Jenkins / County Bd of Appeals

Erroneous as a conclusion of law

pp 4+10 of App's brief

1982 <sup>Co.</sup> Reg Spec Exemption reg →

reg as non-kf use

In 1988 Jenkins reg

July Office Regulation reg is a  
reg. opens by practitioners is reg

seems as non kf → telephone

Donald  
Mr. Gerdner - Residential area

Home occ.

1945 zoning regulations

we ~ n reg ~ Dierdorff

— had spa pop of spa uses  
professional office spa use  
& not home occupation



bpl, is 2 story - 1<sup>st</sup> floor used as dentist  
Diendoff → Jenkins -  
type

2nd floor + Basement always used as  
residential

Substr evidence test -

R-6 zone in R40

200.7 = prof office permitted -

see 54-85  
by ~~humble~~ it exists

Not a home occupation  
but a prof office

See → 54 Md App 497

Change of use → (1) same  
(2) same  
(3) diff - eff in neighborhood  
(4) energy - or extension

→ 267 Md 389 (1974) Kaskade case

35 Md App 417 (1977) Wism

Replies - Carole de Melissa Miller

Even if good ops - must have 2 primary

23/11 2

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Mike Pate

17 yrs + 1 mo.

16 L. Come 37 off

# IMPORTANT MESSAGE

TO Maurice  
DATE 4:20 TIME 2/15 A.M. P.M.  
M Carol  
OF People's Counsel  
PHONE 2188  
Area Code Number Extension

FAX \_\_\_\_\_

TELEPHONED		PLEASE CALL	
CAME TO SEE YOU		RETURNED YOUR CALL	
WANTS TO SEE YOU		WILL CALL AGAIN	
WILL FAX YOU		URGENT!	

Message \_\_\_\_\_

8 WUNS on 3/20

**MICROFILMED**

Signed \_\_\_\_\_



DRAFT

Peoples Counsel for Baltimore County v. Baltimore County Board of Appeals  
Hearing Date Tuesday, February 20, 1995 Case# C955091

Facts People's Counsel for Baltimore County, Rodgers Forge Community Association, Inc, Honey Holston, and Donald Gerding Individually, hereby request judicial review of the 5/31/95 County Board of Appeals'. The opinion in the above case was filed via rule 7-202 of the Maryland Rules of Procedure.

#### Time Line

9/8/94 Petition for Special Hearing to approve a dental office in a residence in D.R. 5.5 zone filed by Francis X. Borgeding, Jr. Esquire, on behalf of Mark P. and Adrienne Jenkins.

9/22/94 Petition in Newspaper

10/12 Hearing held by Zoning Commissioner

4/27/95 Hearing before the Board of Appeals

5/31/95 Opinion and order issued by the majority of the Board in which the Petition for Special Hearing was granted with restrictions. Dissenting Opinion by S. Diane Levero.

6/15/95 petition for Judicial Review in Circuit Court by People's Counsel for Baltimore County.

9/15/95 Record of Proceeding filed in the Circuit Court for Baltimore County.

County Board of Appeal's determined that the appellees' property qualified as an ongoing nonconforming use.

The property location is 7100 York Road located in Rogers Forge. They currently operate the dental offices from the first floor of the dwelling, and currently rent the upstairs portion as residential space. The Jenkins purchased the property in 1976 and lived there until 1988. The neighborhood is concerned with encroachment. The Rogers Forge Community believes that the location no longer qualifies as a residence since they do not live there. Rogers Forge is a community of 177 homes and 600 apartments located south of Towson. Approximately 54% of the households are members of the community association. They have a board of Governors which has 23 members who then elect officers. The Jenkins (Jen) did attempt to sell the property in 1994. The property has no parking. Jen states that many of the patients walk to the practice which is well suited for the many senior citizens.

The Issue is whether the property is a legal, nonconforming use of a dental property.

#### Issues:

1. Whether the subject property qualifies any longer as a home occupation use?

PC believes that a home office is generally incidental to the main or intended use of a residential building. PCM5 A business owner must reside on the premises. Citing Maurer v. Snyder, 87 A.2d 612 (1952).

PC believes that in 1982 Bill 105-82 required if they moved out they would no longer qualify as a legal nonconforming use and became a ordinary commercial occupation.

RFC alleges that the Jenkins admitted to them that they knew that they were operating outside of the zoning law when they moved out. RFC2

RFC is concerned with a domino effect if the office is allowed to continue to operate. RFC3

RFC alleges that the development is inconsistent with the Baltimore County Master Plan.

Jen alleges that the property was put into use as a Dentist's office in the early 1950's and that zoning law was being followed since the property was grandfathered into that zoning law. Jen3. Ever since then the property has been a dental office on the first floor, and a residence on the second. Jen 4.

2. A. Whether appellees may legally operate a dental office in a D.R. 5.5 zone, when the property was formerly used as a home office, but the resident dentists subsequently moved out to another residence while continuing to use the subject property as a dental office and leasing the other party to residential tenants?

B. Whether, in other words, when the appellees moved out of their residence, the primary use became commercial/office, which is not permitted in the residential zone?

Since 1988 the property is no longer serving as the Jenkins residence. PCM7

Citing Mahler v. Board of Adjustments of the Borough of Fair Law, 227 A.2d 511 the Superior Court of New Jersey held that a dentist court not carry on his practice at his former residence even if he sleeps there for emergency calls.

3. Whether appellees' request to use the premises as a dental office is affected by the fact that their request is pursuant to a claim that it qualifies as a non-conforming use?

The Jenkins abandoned the residency requirement necessary for a home office to legally exist. PCM9. If the court decides in favor of the appellees than it will destroy the purpose of residential zoning. All that would be needed for a business to locate in a residential zone is for the business owner to find a willing residential tenant to occupy part of the dwelling. PCM9

Legal nonconforming uses have always been narrowly construed. They have been approved when there is if there is a governmental taking. Here the Jenkins lost any claim to a taking when they moved out. PCM9

Citing Phillips v. Zoning Commissioner, 225 MD 102 (1961) the court of appeals criticized attempts to legitimize commercialism by a creeping process. PCM10

Law

Standard of review: In reviewing this case the court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law. Jen alleges that the court can only overturn the case if there is a clear showing that it was arbitrary, capricious, discriminatory or illegal. Furthermore, a court may not substitute its judgment for that

of the zoning authority if its decision is based upon substantial evidence and the issues decided are fairly debatable. Furthermore, the nonconforming use is a factual determination and does not come under the substantial evidence test.

PC alleges that the reviewing court must on cases involving issues of law reapply to the undisputed material facts. PCRB2

that this question is properly before us, we observe that the firmly established rule of this Court is to the contrary. "Where a plea of guilty is properly entered, as it was here, evidence to prove guilt is not required." *Brown v. State*, 1960, 223 Md. 401, 404, 164 A.2d 722, 724.

Judgments affirmed.



225 Md. 102

Johnny A. PHILLIPS, Jr., et al.

v.

ZONING COMMISSIONER OF HOWARD COUNTY.

No. 228.

Court of Appeals of Maryland.

April 7, 1961.

The zoning commissioner of the county brought a suit against the occupants of realty to enjoin them from using the realty for a junk yard. The Circuit Court for Howard County, James Macgill, J., rendered a decree in favor of the zoning commissioner, and the occupants of the realty appealed. The Court of Appeals, Horney, J., held that the evidence sustained the finding that use of the realty as a junk yard was not a vested nonconforming use on the critical date of zoning regulations and that the realty therefore could not be used as a junk yard.

Decree affirmed.

#### 1. Zoning §329

Whether nonconforming use can be enlarged or extended is ordinarily governed by local zoning ordinances and regulations.

#### 2. Zoning §329

Power to deny use of land as junk yard necessarily included power to prohibit ex-

tension or enlargement of nonconforming use of premises as secondhand furniture store and used automobile lot so as to encompass added use as junk yard for junking and burning of automobiles.

#### 3. Zoning §329

Spirit underlying zoning regulations is to restrict rather than increase nonconforming uses.

#### 4. Zoning §329

Question what is extension or enlargement of nonconforming use is ordinarily one of fact, and determination in each case depends on its own facts.

#### 5. Zoning §331

Mere intensification of nonconforming use is permissible so long as nature of use is not substantially changed.

#### 6. Zoning §329

Right of landowner to continue same kind of nonconforming use does not confer on him right subsequently to change or add to use new and different use amounting to drastic enlargement or extension of prior existing use.

#### 7. Zoning §329

Extension of nonconforming use may be allowed where zoning regulations authorize it.

#### 8. Zoning §329

Ordinarily, change may not be made in nonconforming use of higher classification to one of lower classification.

#### 9. Zoning §788

Evidence sustained finding that use of property as junk yard was not vested nonconforming use on critical date of zoning regulations and that property therefore could not be used as junk yard.

#### 10. Zoning §780

Court of Appeals could not set aside decree prohibiting occupants of realty from

PHILLIP

using it as junk finding that use of vested nonconforming use of zoning regulations. Maryland.

Richard H. S. Bernard F. Goldpellants.

Daniel M. Muappellee.

Before BRUNSON, HAMMOND, HORNEY, JJ.

HORNEY, J.

The sole question out of an injunction in a zoning case whether the presence of land along Boulevard in Howard County junk yard constitutes a nonconforming use.

No proceeding by Phillips, Jr., and others (appellants) to have the zoning regulations amended by the Court of Appeals and the Circuit Court for Howard County. The change prohibiting the operating and maintaining of a junk yard and the purpose and use of the property for storing the junk, however, the appellants the right to use the premises around it (but not the rear of the

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using it as junk yard, where chancellor's finding that use of realty as junk yard was vested nonconforming use on critical date of zoning regulations was not clearly erroneous. Maryland Rules, rule 886 a.

Richard H. Stevenson, Baltimore, and Bernard F. Goldberg, Ellicott City, for appellants.

Daniel M. Murray, Jr., Ellicott City, for appellee.

Before BRUNE, C. J., and HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ.

HORNEY, Judge.

The sole question on this appeal—arising out of an injunction proceeding instead of in a zoning case as might be expected—is whether the present use of a tract or parcel of land along the Baltimore-Washington Boulevard in Howard County as and for a junk yard constitutes a lawful nonconforming use.

No proceedings were taken by Johnny A. Phillips, Jr., and others (owners-appellants) to have the issue of a nonconforming use determined by the Board of Zoning Appeals and the case came before the Circuit Court for Howard County on the bill of the Zoning Commissioner for an injunction. The chancellor granted an injunction prohibiting the owners-appellants from operating and using the premises as a junk yard and "more specifically for the purpose and use of wrecking, dismantling and burning motor vehicles, or removing or storing the parts thereof." The decree, however, reserved to the owners-defendants the right to use the building on the premises and the immediate area around it (but not the space or field in the rear of the building which had been

used for pasture of goats and cows or left unutilized) for the "storage and sale of second hand furniture, motor vehicles and other items," which the chancellor found was the only use employed as of the critical date.

In this posture of the case the question for this Court to decide is not whether there was "substantial evidence" to support the finding of the Board, but whether the chancellor was "clearly erroneous" in finding that the present use was unlawful with respect to the "junking" of motor vehicles on the property in question. See Maryland Rule 886 a. Thus, it appears that a review of the evidence as well as the applicable zoning regulations is necessary.

Under the original zoning regulations, adopted July 27, 1948, the subject property was zoned "Commercial B." Neither this classification nor any other in the original regulations allowed the use of land as a junk yard. However, under such regulations (Paragraph 5-A) the Zoning Commissioner was empowered, after a public hearing, to "permit any use of land or building in the Commercial B. District which does not adversely affect the public health, safety, morals or general welfare and which does not contravene the purpose and intent of [the zoning] regulations." There was no definition of a "junk yard," but the regulations (Paragraph 6-1) contained a provision permitting nonconforming uses provided they were in existence on or before the critical date. The privilege, however, was confined to "that part of a building or the extent of land actually used" at that time.

On January 12, 1954, the original zoning regulations were repealed and a more comprehensive zoning scheme was adopted. Under the new regulations, presently in effect, the subject property was zoned M-1 (Light Manufacturing), and again a junk yard was not permitted in this classification. However, the present regulations (§ 23-A-9) permit a junk yard on property zoned



M-2 (Heavy Manufacturing) provided the Board of Zoning Appeals determines that such use would not be detrimental to the public health, safety, morals and general welfare or would prevent the most appropriate use of the land. The present regulations (§ 30-A-16) define a junk yard as:

"Any open space or building, or both, where scrap metals, bottles, rags, including new clippings, rubber, paper or any discarded material of any kind is stored, handled, baled, packed, sold or reconditioned or *where motor vehicles are dismantled or wrecked or wrecked motor vehicles or parts are stored.*" [Italics supplied.]

The present regulations (§ 13-A-H) also permit existing nonconforming uses, but again such use is confined to that "part of a building" or to the "extent of land" actually used on the critical date. And, besides these limitations, the regulations (§ 13-B, C, D) further provide that once a nonconforming use has been changed to a higher classification it may not thereafter be changed to a lower classification; that such use may not be changed to a use of the same classification unless approved by the Board of Zoning Appeals;<sup>1</sup> and that a nonconforming use may not be extended or increased in size or changed in design and buildings may not be erected or extended on land without the approval of the Board.<sup>2</sup> The present regulations (§ 7-A-5) further provided that automobile, truck or farm equipment stor-

age, sale and repair services are permissible in B-2 Districts, but the dismantling or wrecking of vehicles were specifically excepted.<sup>3</sup>

With regard to the critical date in the instant case, both parties assumed at the injunction hearing that January 12, 1954, was the critical date, but the chancellor subsequently concluded and so ruled, and the parties have concurred by filing a stipulation in this Court, that the correct critical date was July 27, 1948.

As might be expected the evidence concerning the existence or non-existence of a nonconforming use prior to the critical date is conflicting. Supporting the existence of a nonconforming use, there was evidence that the property in question had been purchased in 1946 for the purpose of using it for junking automobiles and that it had been used for that purpose ever since in conjunction with a general junk and second hand furniture business. There was evidence that junked automobiles and piles of junk as well as used automobiles in running condition had been observed on the premises as early as July of 1946. There was evidence that the property was being used as what was characterized as a "junk yard" in 1947 and as proof thereof several photographs were produced, one showing children against a background of several automobiles in a good state of repair, one showing a truck or bus and several automobiles with some of the wheels removed, and one showing two automobiles

1. The original regulations (Paragraph 6-2-A) had permitted a change of a nonconforming use to a use of similar classification, but were silent as to higher or lower classifications.

2. The original regulations (Paragraph 6-2-B) had permitted an extension of a nonconforming use not exceeding sixty feet from the existing nonconforming use of land or building provided set back requirements were maintained. See Board of Zoning Appeals of Howard County

v. Meyer, 1955, 207 Md. 389, 114 A.2d 626, 629, where an extension of one hundred and twenty feet was allowed under the circumstances in that case.

3. The original regulations (Paragraphs 4-10 and 5-1) had permitted automobile and truck sales and service in Commercial A and B Districts (which it seems would include a used car sales lot), but were silent as to the dismantling or wrecking of vehicles on the premises.

in a bad state of repair intact. There was evidence the former owner had purchased in 1952. There was evidence "auto parts all over the place." And there was evidence the owner had been employed there in 1955 or 1956 to work on automobiles.

On the other hand, there was considerable evidence rebutting the valid nonconforming use claim on the critical date so far as the dismantling and burning of motor vehicles concerned. There was evidence the former owner had first used the property as a used furniture warehouse and began to buy used vehicles until that such vehicles were not dismantled on the property but were sold away and that no automobiles were stored in the rear of the building in 1954. There was evidence that the prior owner had the building used as a furniture and fixtures store and it as well as several trucks, and other vehicles on the outside, frequently he had begun to buy "used" vehicles then on sale at Ford's prior to 1954 the automobiles on the property had been posted with "junk" signs and were not "junked" but sold as used automobiles. There was evidence that between 1949 and 1954 furniture was repaired on the premises and taken to Virginia for sale during that time no vehicle was dismantled or burned on the premises. There was evidence that in September of 1954, goats and cows were pastured in the back field where vehicles were being dismantled and burned in the pasture did not begin to be dismantled up until 1957. And there was testimony that the junking and burning of vehicles was of comparative recent origin. It would seem that the dismantling, wrecking and burning of worn or wrecked motor vehicles is far more recent and definitely more obnoxious

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prior to the critical  
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Id. 380, 114 A.2d  
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In a bad state of repair but seemingly still intact. There was evidence that the former owner had purchased a "junk" in 1952. There was evidence that there were "auto parts all over the place" in 1953. And there was evidence that the present owner had been employed by the prior owner in 1955 or 1956 to cut up and burn automobiles.

On the other hand, there was considerable evidence rebutting the existence of a valid nonconforming use of the property on the critical date so far as the junking and burning of motor vehicles thereon was concerned. There was evidence that the former owner had first used the premises as a used furniture warehouse and did not begin to buy used vehicles until about 1950, that such vehicles were not dismantled on the property but were sold and hauled away and that no automobiles were ever stored in the rear of the building prior to 1954. There was evidence that in 1947 the prior owner had the building filled with used furniture and fixtures and kept some of it as well as several trucks, automobiles and other vehicles on the outside, that subsequently he had begun to buy "war surplus" vehicles then on sale at Fort Meade and that prior to 1954 the automobiles on the property had been posted with "for sale" signs and were not "junked" but were sold as used automobiles. There was evidence that between 1949 and 1953 considerable furniture was repaired on the premises and taken to Virginia for sale and that during that time no vehicle was ever junked or burned on the premises. There was evidence that in September of 1954 and before, goats and cows were pastured in the back field where vehicles were presently being dismantled and burned and that the pasture did not begin to "get junked up" until 1957. And there was other testimony that the junking and burning was of comparative recent origin.

4. Logically it would seem that the dismantling, wrecking and burning of worn out or wrecked motor vehicles is far different and definitely more obnoxious

On this evidence, the chancellor, in judging the weight of the evidence and the credibility of the witnesses who had known and observed the premises over a period of years, found as a fact that there had been no "wrecking, dismantling or burning of vehicles on the property prior to July 27, 1948, so as to give such operations the present status of a lawful non-conforming use."

To summarize, the evidence seems to indicate, as the chancellor found, that what was in existence in 1948, as a nonconforming use of a used car lot and a store or warehouse for the storage and sale of second hand furniture and fixtures and other used articles, had in 1960, by some sort of "creeping" process, developed into a full-fledged junk yard and shop, where, among other things, large numbers of worn out and wrecked motor vehicles were junked and burned. The owner concedes that the use he is now making of the property constitutes a "junk yard," but contends that the chancellor was clearly erroneous on the evidence presented. The question then—since the owner was not precluded from using the building and the immediate area around it for the storage and sale of second hand furniture, motor vehicles and miscellaneous articles—is whether the use of the premises for junking and burning of motor vehicles and the salvaging and storage of parts, is a new and different use (now absolutely forbidden in an M-1 zone) from that for which the premises were used prior to July 27, 1948.

[1-4] Whether or not a nonconforming use can be enlarged or extended is ordinarily governed by the provisions of the local ordinances and regulations, and in this case, where the zoning regulations in effect when the nonconforming use vested not only impliedly prohibited a change from a classification as a "used car" lot to a lower classification as a lot for dismantling and wrecking of motor vehicles,<sup>4</sup> but def-

than a used car lot and second hand furniture store. Cf. Parr v. Bradyhouse, 1939, 177 Md. 245, 9 A.2d 751.

initely disallowed all use as a junk yard in any land district unless such use was approved by the Zoning Commissioner, it would seem that the power to deny the use of land as a "junk yard" necessarily included the power to prohibit the extension or enlargement of an existing nonconforming use as a second hand furniture store and used car lot so as to encompass the added use of the premises as a junk yard for the junking and burning of automobiles. This is so because the spirit underlying zoning regulations is to restrict rather than increase nonconforming uses. 1 Yokley, *Zoning Law and Practice*, § 153; 2 Rathkopf, *Law of Zoning and Planning*, § 59-1; Colati v. Jirout, 1946, 186 Md. 652, 47 A.2d 613. The question, however, as to what is an extension or enlargement of a nonconforming use is ordinarily one of fact,<sup>5</sup> and in determining it the question in each case must stand on its own facts. 101 C.J.S. Zoning § 189.

[5, 6] While it is true that mere intensification of a nonconforming use is permissible so long as the nature of use is not

5. It is noted that the present zoning regulations (§ 13-F) specifically provide that whether a nonconforming use exists (or has been abandoned) shall be a question of fact.

6. Other cases in the Chayt line include Knox v. Mayor and City Council of Baltimore, 1941, 180 Md. 88, 23 A.2d 15; Colati v. Jirout, 1946, 186 Md. 652, 47 A.2d 613; Cleland v. Mayor and City Council of Baltimore, 1951, 198 Md. 440, 84 A.2d 49; Fritze v. City of Baltimore, 1953, 202 Md. 265, 96 A.2d 4; and Shanahan v. Ringgold, 1957, 212 Md. 481, 129 A.2d 797.

7. For a case in point from another jurisdiction concerning a new and different use prohibited as a nonconforming use, see President and Trustees of Village of Ossining v. Meredith, 1949, 275 App. Div. 850, 88 N.Y.S.2d 775, where the change was from the storage of poles, cables and pipes and the use of trucks from time to time to move such materials to the storage of tractors, freight trucks and busses and the daily use of such noisy and vibrating vehicles in and about the storage facility, the Appellate

substantially changed, it is generally recognized that the right of a landowner to continue the same kind of use to which the property was devoted on the critical date does not confer on him a right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use. Yokley, op. cit., § 152; Rathkopf, op. cit., §§ 58-5, 60-1; 58 Am.Jur., Zoning, § 166; 101 C.J.S. Zoning § 189, supra.

[7, 8] The courts generally disapprove—as a substantial departure from a vested nonconforming use—a change from one use to another. The rule in Maryland that a change from one nonconforming use to a new and different one constitutes an extension of the use is found in that line of cases which began with Chayt v. Zoning Appeals Board, 1939, 177 Md. 426, 9 A.2d 747, and has continued through a series of cases ending with Boulevard Scrap Co. v. City of Baltimore, 1957, 213 Md. 6, 130 A.2d 743.<sup>6, 7</sup> When, however, the zoning

Division overruled a Special Term holding that "storage was storage" and held that the later use was new and different. For other out-of-state cases stating what constitutes a new and different use see Town of Lexington v. Bean, 1930, 272 Mass. 547, 172 N.E. 867 [change from repairing trucks by private owner to repair shop available to public generally]; Kensington Realty Holding Corp. v. Jersey City, 1937, 118 N.J.L. 114, 191 A. 787, affirmed 1938, 119 N.J.L. 338, 196 A. 691 [change from a tea room (formerly a doctor's office) to a funeral home]; Killian v. Brith Sholem Congregation, Mo.App.1941, 154 S.W.2d 387 [change of part of a cemetery into a place for the display and sale of monuments]; DeFelice v. Zoning Board of Appeals, 1943, 130 Conn. 156, 32 A.2d 635, 638, 147 A.L.R. 161 [change from a "dry-screen" sand mining operation to a "wet sand classifier"]; Sitgreaves v. Board of Adjustment, 1947, 136 N.J.L. 21, 54 A.2d 451 [change from a garage to an auto repair shop]; San Diego County v. McClurken, 1951, 37 Cal.2d 683, 234 P.2d 972 [change from small movable gasoline tanks to a consid-

regulations and a nonconforming use. Board of Zoning Appeals v. County v. Meyers, 1955, 2 A.2d 626, and where a permit is required. It is also true—provisions of a case—that a double when the case of one nonconforming use is the same or a change from one use to another is becoming use of a plate only a change from the same use to the adoption of another and different use which is not a substantial change. \* \* \* sub-advantage (Garrett), 194, 23 367, 372.

[9, 10] In evidence to the proper not a vested right, critical date,

Grady, Inc. v. Key v. Co., 11

nged, it is generally recog-  
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classifier"]; Sitgreaves v.  
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P.2d 972 [change from small  
gasoline tanks to a consid-

## MEYERS v. JACHAM ENTERPRISES, INC.

Cite as 169 A.2d 415

Md. 415

regulations authorize it, an extension of  
a nonconforming use may be allowed. See  
Board of Zoning Appeals of Howard  
County v. Meyer, 1955, 207 Md. 389, 114  
A.2d 626, another Howard County case,  
where a permissible extension was allowed.  
It is also true—depending, of course, on the  
provisions of the local regulations in each  
case—that a different rule may be applica-  
ble when the change involves a substitution  
of one nonconforming use for another of  
the same or a higher classification. Hig-  
gins v. Mayor and City Council of Balti-  
more, 1955, 206 Md. 89, 110 A.2d 503;  
Nyburg v. Solmson, 1954, 205 Md. 150, 106  
A.2d 483, 46 A.L.R.2d 1051; Hare v. Mayor  
and City Council of Baltimore, 1952, 200  
Md. 477, 90 A.2d 217; Green v. Garrett,  
1949, 192 Md. 52, 63 A.2d 326; Parr v.  
Bradyhouse, 1939, 177 Md. 245, 9 A.2d 751.  
Cf. Board of Zoning Appeals of Baltimore  
County v. Gue, 1958, 217 Md. 16, 141 A.2d  
510. Ordinarily, however, a change may  
not be made in a nonconforming use of  
a higher classification to one of a lower  
classification, as was the case here. Roach  
v. Zoning Appeals Board, 1938, 175 Md. 1,  
199 A. 812; Lipsitz v. Parr, 1933, 164 Md.  
222, 164 A. 743. The reason for disallowing  
a change from one nonconforming use to  
another is because the lawful nonconform-  
ing use of land "must be held to contem-  
plate only a continuation of substantially  
the same use which existed at the time of  
the adoption of the ordinance, and not some  
other and different kind of nonconform-  
ing use which the owner of the land  
\* \* \* subsequently find to be profitable  
or advantageous." In re Botz (Botz v.  
Garrett), 1942, 236 Mo.App. 566, 159 S.W.  
2d 367, 372.

[9,10] In this case, where there was  
evidence to justify a finding that the use  
of the property in question as a junk yard  
was not a vested nonconforming use on the  
critical date, the chancellor in so finding

erably larger underground tank]; and  
Markey v. Danville Warehouse & Lum-  
ber Co., 1953, 119 Cal.App.2d 1, 259 P.

was not clearly erroneous, and we are  
therefore without authority to set aside the  
decree granting the injunctive relief sought  
by the Zoning Commissioner. Rule 886 a.

For the reasons stated herein the decree  
will be affirmed.

Decree affirmed; appellants to pay costs.



225 Md. 86

Louis J. MEYERS, Indlv. and T/A  
Marclay-Oden Co.

v.

JACHAM ENTERPRISES, INC.

No. 202.

Court of Appeals of Maryland.

April 7, 1961.

Attachment proceeding presenting  
question of a broker's right to recover a  
commission from proceeds of a note held in  
escrow pursuant to a bulk sales agreement.  
The Circuit Court for Baltimore County,  
John E. Raine, Jr., J., awarded the funds  
in question to a claimant and appeals were  
taken. The Court of Appeals, Horney, J.,  
held that an agreement in lieu of strict  
compliance with the bulk sales statute, pro-  
viding for retention in escrow of a note for  
part of the purchase price to protect pur-  
chasers against enforcement of a rejected  
claim or "any other claims for fees, com-  
missions or creditors" was intended only  
to benefit purchasers and not to enable bro-  
ker to recover commission due from pro-  
ceeds of note held in escrow.

Affirmed.

2d 19 [change from nonindustrial use  
to a cement mixing operation].

CLELAND et al. v. MAYOR & CITY COUNCIL OF BALTIMORE et al.

No. 30.

Court of Appeals of Maryland.  
Nov. 2, 1951.

Three practicing physicians and their wives, co-owners of certain property applied for a permit to establish a parking lot on their property to be used for parking automobiles belonging to physicians and members of their staff who were using the physicians' offices. The application was opposed by Joseph P. Cleland, trustee, and others. The building inspection engineer declined to grant the permit and an appeal was taken to the Board of Municipal and Zoning Appeals where the application was approved and the objectors appealed. The Mayor and City Council of Baltimore and others were named appellees. The Baltimore City Court, W. Conwell Smith, C. J., affirmed the action of the Board and the objectors appealed. The Court of Appeals, Marbury, C. J., held that exceptions to the Zoning Act are not a matter of right and as it appeared that nothing would be served by granting permit but convenience of physicians and their employees, Board was not justified in granting an exception.

Order reversed and case remanded.

1. Municipal Corporations §601(15)

Baltimore ordinance giving mayor and city council authority to provide by ordinance, on conditions, for establishment of open areas in a residential use district for parking of automobiles, did not impliedly repeal provisions of zoning ordinance permitting board of municipal and zoning appeals to grant use of same classification, necessary or incidental to a nonconforming use existing in a residential use district, within 50 feet from such nonconforming use, and permitting board to grant within 100 feet of a boundary line between use districts any use permitted in that one of such use districts which has lower classification.

2. Municipal Corporations §621.43

Where counsel for applicant for permit to establish parking lot for physicians and their employees on property where physicians' offices were located made unsworn statement of situation to board of

municipal and zoning appeals, and two physicians were then called, who adopted counsel's statement, physicians were subject to cross-examination on any statements made by counsel, and method of procedure was not to be commended as a general proposition.

3. Municipal Corporations §621.17

Special exceptions to a zoning ordinance will never be granted to gratify mere convenience, there must be a necessity, and that necessity must be so urgent and the facts so extraordinary as to require withdrawal of that particular case from application of accepted rule.

4. Municipal Corporations §601(23)

The spirit of the Baltimore zoning ordinance is against extension of nonconforming uses.

5. Municipal Corporations §621.17

Rule that special exception to city zoning ordinance will never be granted to gratify convenience, and not only must necessity be urgent but facts in given case so extraordinary as to require withdrawal of case from application of accepted rule, applies to provision of Baltimore zoning ordinance authorizing board of municipal and zoning appeals to grant within 100 feet of a boundary line between two use districts any use permitted in that one of such use districts which has lower classification.

6. Municipal Corporations §621.30

Convenience of physicians and their employees did not warrant granting of exception to zoning ordinance by Baltimore board of municipal and zoning appeals of property owner's application for permit to establish on property where physicians' offices were located in residential use area of parking lot for automobiles of physicians and their employees, although there was a pre-existing nonconforming use of that portion of property permitting its use for physicians' offices.

Norman C. Melvin, Jr., and Douglas H. Gordon, both of Baltimore, for appellants.

J. Cookman Boyd, Jr., Baltimore (F. Murray Benson, Baltimore, on the brief), for appellees Bennett, Johnson & Eaton and others.

Francis J. Valle, Asst. City Sol., Baltimore (Thomas N. Biddison, City Sol., Baltimore, on the brief), for appellees Mayor & City Council of Baltimore.

Before MARBURY, C. J., and DELA-PLAINE, COLLINS, and HENDERSON, JJ.

MARBURY, Chief Judge.

Three practising physicians and their wives, co-owners of 4-6 East Madison Street, applied for a permit to establish a parking lot on their property to be used for parking cars belonging to the doctors and members of their staff who were using the doctors' offices at 4 East Madison Street. 4-6 East Madison Street is practically one lot, although it has two numbers. It is located in a residence zone, although there is a pre-existing non-conforming use of 4 East Madison Street, which has been used as doctors' offices since 1919. There is no building on that part of the lot known as 6 East Madison Street, except a garage which holds three automobiles. The building inspection engineer necessarily declined to grant the permit, and an appeal was taken to the Board of Municipal and Zoning Appeals, where the application was approved. An appeal was taken to the Baltimore City Court by the appellants, residents and taxpayers of the city, and owners of real estate near the property. The Baltimore City Court affirmed the action of the Board, and from its order the appeal comes here.

The order appealed from not only authorizes the use of the rear of 6 East Madison Street as a parking lot for the doctors and their employees, but also authorizes an entrance and exit to and from the rear of said property by a roadway on or over the sidewalk and front portion of the lot which is on East Madison Street. The property to the south adjoining the lot of the applicants is zoned first commercial, with the exception of the University Club property which is at the corner of Madison and Charles Streets, and is zoned residential.

[1] The Board of Municipal and Zoning Appeals attempted to act under the provisions of Paragraphs 12(b) and (c) of the zoning ordinance. (b) permits the Board to grant a use of the same classification, necessary or incidental to a non-conforming use now existing in a residential use district, within 50 feet from such non-conforming use. (c) permits the Board to grant within 100 feet of a boundary line between two use districts, any use permitted in that one of such use districts which has a lower classification. Appellants contend that the right to act under these provisions is taken away by the passage of Ordinance 1312, approved July 5, 1950. This ordinance adds Paragraph 14(a) to the zoning ordinance, and gives the Mayor and City Council authority to provide by ordinance, upon conditions for the establishment, maintenance and regulation of open areas in a residential use district, for the parking thereon of automobiles. We are unable to agree with appellant's contention in this respect, as we do not think this ordinance impliedly repeals Paragraphs 12(b) and 12(c).

[2] In their attack upon the action of the Board, the appellants contend that there was no admissible evidence before the Board. The basis for this is that counsel for the applicants made an unsworn statement of the situation, and then two of the doctors were called, who adopted counsel's statement. The doctors were, however, subject to cross-examination under these circumstances on any statements made by counsel, and, while this method of procedure is not to be commended as a general proposition, it was probably allowed in this case as a means of saving time, and we cannot say that there was not evidence of the facts before the Board when it acted. Assuming, therefore, that the statement of counsel became evidence after its adoption by the doctors, we find that the basis for the application is that these physicians are active orthopedic surgeons, and the pressure of parking space has become intolerable because they have to get to their place of business and get away when needed, are frequently called on emergencies, and, if they do not have access to their own cars, delay ensues. The entrance to

the garage and through of late year commercial. The space in cars are th to get out, a ensues. Th wall along mental iron which would the rear of Sometimes t ambulance t want the use cars of nur- work in the

[3-5] Un- to be granted tal to a non isting. The n maintaining d ing to show t. tal to such o adjacent to th great conveni their cars, and parked in the this is neither physicians hav in the downto- it is not neces ing facilities or practice their consistently he will never be g venience, that and that neces the facts so ext withdrawal of t application of t cepted rule is th ing ordinance d districts. It is p is not intended cases of urgent that the spirit of Ordinance is ag conforming uses. that a few non- uses, allowed to the regulations it will not be a subs Md.Rep. 82-85

the garage is through adjacent property and through an alley which, however, has of late years become blocked by trucks of commercial enterprises which border on it. The space in the garage is such that if three cars are there, and the first one in wants to get out, a difficult and awkward situation ensues. The proposal was to breach the wall along Madison Street, put in an ornamental iron gate and a ten-foot driveway which would lead to the back of the lot and the rear of the building on lot No. 4. Sometimes the applicants would want an ambulance to run in, but they primarily want the use of the parking space for the cars of nurses and other employees who work in the building on No. 4.

[3-5] Under Paragraph 12(b), the use to be granted must be necessary or incidental to a non-conforming use already existing. The non-conforming use was that of maintaining doctors' offices. There is nothing to show that it is necessary or incidental to such offices to have parking areas adjacent to them. It would no doubt be a great convenience to the applicants to have their cars, and the cars of their employees, parked in the rear of their offices, but this is neither usual nor necessary. Many physicians have offices in office buildings in the downtown sections of the city, and it is not necessary for them to have parking facilities on the same lot on which they practice their profession. This court has consistently held that special exceptions will never be granted to gratify mere convenience, that there must be a necessity, and that necessity must be so urgent, and the facts so extraordinary as to require the withdrawal of that particular case from the application of the accepted rule. That accepted rule is the division made in the zoning ordinance for various classes of use districts. It is part of a general plan which is not intended to be changed except in cases of urgent necessity. "It is evident that the spirit of the Baltimore City Zoning Ordinance is against the extension of non-conforming uses. It is generally accepted that a few non-conforming buildings and uses, allowed to continue as exceptions to the regulations in order to avoid injustice, will not be a substantial injury to the com-

Md.Rep. 82-85 A.2d-13

munity if they are not allowed to multiply where they are harmful or improper; but non-conforming uses should not be perpetuated any longer than necessary, and the Zoning Board should make constant efforts to move them into the use districts where they properly belong." *Colati v. Jirout*, 186 Md. 652, 657, 47 A.2d 613, 615. See also *Mayor and City Council of Baltimore v. Byrd*, 191 Md. 632, 638, 62 A.2d 588; *Heath v. Mayor and City Council of Baltimore*, 190 Md. 478, 483-484, 58 A.2d 896. The same general rule applies to the exception to be permitted under Paragraph 12(c) within 100 feet of a boundary line between two use districts. We had such a situation in the recent case of *Gleason v. Keswick Improvement Association, Md.*, 78 A.2d 164, where we ruled against the exception. Cf. *Hoffman v. Mayor & City Council, Md.*, 79 A.2d 367.

The trial court relied upon the case of *Akers v. Mayor and City Council of Baltimore*, 179 Md. 448, 20 A.2d 181, for the statement that occupants of certain houses are not prohibited from parking cars in their yards. That, however, is quite different from the present application. What is desired here is not to permit the doctors to park their cars in the rear of their residences where they also maintain offices. It is to provide a general parking space for not only their cars in the rear of their offices, but also the cars of all their employees who work in the building. We are unable to find any case in which this court has held that that is a permissible use.

[6] In the instant case, we find no such compelling necessity as to justify the Board of Municipal and Zoning Appeals in granting an extension of the non-conforming use, or in utilizing the provisions of Section 12(c). It was not intended by the zoning act that whenever it was convenient or desirable for an individual owner to have a special exception, he should be allowed it by the Board. Exceptions are not a matter of right, and where it appears, as it does in this case, that nothing will be served but the convenience of the doctors and their employees, we do not think such a case, based upon convenience alone, would justify the Board in granting an exception.



Such action, if based upon insufficient reasons, is arbitrary and is in violation of the zoning law, and it cannot stand.

For these reasons, the action of the trial court will be reversed and the case remanded in order that that court may pass an order reversing the action of the Board of Municipal and Zoning Appeals and directing the dismissal of the petition.

Order reversed with costs and case remanded.



**WILLIAMS v. McCARDELL et al.**  
No. 4.

Court of Appeals of Maryland.  
Oct. 31, 1951.

Proceeding by Charles A. Williams, against J. Neil McCardell, and others, wherein it was sought to compel the Board of Trustees of the Employees' Retirement System of Baltimore City, to approve petitioner's application for accidental disability benefits. The Court of Common Pleas of Baltimore City, John T. Tucker, J., dismissed the petition, and the petitioner appealed. The Court of Appeals, Markell, J., held that the evidence sustained the finding that the petitioner's disability was not due to any accident or a series of accidents occurring in course of petitioner's employment as a fireman by the Baltimore City Fire Department.

Order affirmed.

**1. Municipal Corporations** ¶200(9)

In proceeding by city fireman for accidental disability benefits for coronary thrombosis, evidence sustained finding that fireman's disability was not due to any single accident or series of accidents occurring in course of fireman's employment by city.

**2. Administrative Law and Procedure** ¶763

Action of administrative board may be arbitrary or unlawful because facts found are unsupported by evidence or conclusions drawn are contrary to law or facts.

**3. Administrative Law and Procedure**  
¶741, 760, 791

Generally, courts are concerned with results rather than methods of administrative boards and review the action not the opinion of the board, and courts cannot set aside findings of facts supported by substantial evidence merely by calling findings arbitrary.

**4. Mandamus** ¶187(9)

Where evidence in proceeding for mandamus commanding board of trustees of employee's retirement system to approve petitioner's application for accidental disability benefits presented no issue of fact to be submitted to jury, alleged error if any, in denying petitioner jury trial, on ground that he failed to pray therefor within time prescribed by rule of court, was not prejudicial.

O. Bowie Duckett, Baltimore (Samuel M. Campanaro Baltimore, on the brief), for appellant.

Thomas N. Biddison, City Solicitor and Daniel B. Leonard, Asst. City Solicitor, both of Baltimore, on the brief, for appellees.

Before MARBURY, C. J., and DELA-PLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

MARKELL, Judge.

This is an appeal from an order dismissing a petition for mandamus commanding respondents, the Board of Trustees of the Employees' Retirement System, to approve petitioner's application for accidental disability benefits from December 11, 1948.

In 1927 petitioner, then twenty-five years old, entered the Baltimore City Fire Department. In 1938 he was promoted to the rank of Lieutenant. On December 11, 1948 he was retired by the Department as totally and permanently unfit for duty. He is a member of the Employees' Retirement System.

Section 6 of the Employees' Retirement System ordinance (Ordinance No. 553, approved February 21, 1926; Baltimore

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94 N.J.Super. 173

Arthur F. MAHLER, Plaintiff-Respondent,

v.

The BOARD OF ADJUSTMENT OF the  
BOROUGH OF FAIR LAWN, and The Bor-  
ough of Fair Lawn, Defendants-Appellants.

No. A-1339.

Superior Court of New Jersey  
Appellate Division.

Argued Jan. 9, 1967.

Decided March 9, 1967.

Proceeding to determine zoning matter. The Superior Court, Law Division, entered a judgment setting aside determination of board of adjustment of borough and the borough appealed. The Superior Court, Appellate Division, Conford, S. J. A. D., held that under home occupation ordinance requiring that the house in which occupation is carried on be the private residence of the party carrying on the occupation, a dentist, who had carried on his dental practice in house in which he and his family had lived and then removed himself and his family to another house, could not carry on dental practice in the first house in which he would sleep only on nights he had emergency calls, and there was no arbitrary or unreasonable action by board in denying variance.

Reversed; mandate on reversal stayed for six months.

Foley, J. A. D., dissented.

1. Zoning ~~C-308~~

Under home occupation ordinance requiring that house in which occupation is carried on be private residence of the party carrying on the occupation, a dentist, who had carried on his dental practice in house in which he and his family had lived and then had removed himself and his family to another house, could not carry on dental practice in the first house in which he

would sleep only on nights he had emergency calls.

2. Zoning ~~C-490~~

To warrant a variance based upon the "general welfare" criterion of statute, the use of a smaller scope than institutional dimension should give board of adjustment and governing body called upon to approve recommendation of variance serious pause before allowing a variance justified only or primarily on special relationship between proposed use and promotion of general welfare. N.J.S.A. 40:55-39, subd. d.

3. Zoning ~~C-490~~

Affirmative statutory requirement of special reasons for granting a variance is no less integral to case for variance than negative criteria of absence of special detriment to public good and impairment of zone scheme and plan. N.J.S.A. 40:55-39, subd. d.

4. Zoning ~~C-610~~

Conclusive consideration in reviewing denial of zoning variance was that, whether or not variance could have been properly granted, there was no basis for judicial conclusion that it had acted arbitrarily, capriciously or unreasonably in exercising its discretionary quasi-judicial powers by denying such recommendation.

5. Zoning ~~C-610~~

Board of adjustment did not act arbitrarily, capriciously or unreasonably in denying request of dentist, who had removed his family to another house and who could no longer practice dentistry in his first house under home occupation ordinance, that he be allowed a variance to continue his dental occupation in first house.

6. Zoning ~~C-623~~

There is an area of special discretion reposed on local agencies within which, in many situations, either grant or denial of variance would be judicially sustained.

## 7. Zoning §-702

Decision of board of adjustment on zoning matters will be sustained if its decision complies with statutory criteria and is founded in adequate evidence.

## 8. Zoning §-607

Judicial philosophy of sympathetic approach to local zoning decisions is even more cogently applicable to case where court reviews denial of variance than when it reviews grant.

## 9. Zoning §-722

Although there was a pending master plan for changing zone which would convert zone into one for professional and office use as requested in variance application, board of adjustment was bound to deal with application on basis of zone district as it then stood, and on review, the Appellate Division was bound to deal with it as it stood at time of appeal.

## 10. Zoning §-722

Where there was a pending change in master zoning plan which would convert area, to zone for professional office use, but variance for such a use was denied and property owner was unsuccessful on appeal, under the circumstances, Appellate Division, with consent of borough, would stay mandate for six months so that landowner could have an opportunity to avail himself of any permissive zone change which might be adopted in interim by borough.

Robert L. Garibaldi, Legal Asst., for appellants (Floyd V. Amoresano, Borough Atty., attorneys).

James A. Major, Hackensack, for respondent (Major & Major, Hackensack, attorneys).

Before Judges CONFORD, FOLEY and LEONARD.

The opinion of the court was delivered by

CONFORD, S. J. A. D.

This is an appeal from a judgment of the Law Division setting aside a determination by the Board of Adjustment of Fair Lawn: (a) construing the "home occupation" provision of the municipal zoning ordinance to prohibit plaintiff's proposed use, and (b) refusing an alternative application for a recommendation to the mayor and council for a variance allowing the use. The Law Division held the action of the board of adjustment unjustified in both respects. We disagree and reverse.

Dr. Mahler, the plaintiff, is a young dentist who has resided with his family and carried on a rapidly growing practice in the premises in question on Fair Lawn Avenue in Fair Lawn since 1956. This is an R-1-3 Zone, primarily restricted to one-family residences on 67' x 100' minimum lots. The zone permits home occupations in the following language:

"Home Occupation: The professional office of a physician, surgeon, dentist, lawyer, artist, photographer, real estate or insurance agent or broker. Home occupation such as millinery, dress-making or hairdressing, provided there is no display of goods visible from the street. In all instances the occupation shall be carried on only by a person within the dwelling or apartment used by him as his private residence and the space given over to said occupation shall not equal more than one-half of the first floor area of the building."

In the Spring of 1965 Dr. Mahler removed his family, consisting besides himself of his wife, two children and a full-time maid, to a new home in Glen Rock. The Fair Lawn building by then no longer adequately accommodated the combined requirements of the doctor's family and practice, since enlargement of the family was contemplated and the living quarters were

cramped. By then Dr. Mahler's staff consisted, in addition to himself, of two part-time practicing dentists,<sup>1</sup> two full-time nurses, a part-time nurse and a part-time hygienist. The building is a split-level structure. It includes a basement containing a bedroom; a first level devoted to the dental suite, comprising a reception room, nurses' stations, three treatment rooms, a study, lavatory and darkroom; a second level embracing a living room, dining room and kitchen; and a third level with three bedrooms and bath. The family living quarters were in the second and third levels, and the maid occupied the basement.

I

As indicated above, the first phase of the application before the board of adjustment was for a declaratory ruling as to whether the continued conduct of the dental practice in the building would fall within the permissive scope of the "home occupation" provision of the ordinance. The presentation of the applicant was that he would continue occasionally to use the basement bedroom to sleep in. Although the application and the doctor's testimony indicated an intention to rent out the main living quarters to a "caretaker" counsel volunteered that the applicant would be willing to keep the living quarters unrented if the board so stipulated in approving the application.

Dr. Mahler argued that in these circumstances the premises would constitute his "residence" although his "domicile" would concededly be at the family home in Glen Rock. However, in the course of cross-examination by a board member it was made clear that the contemplated "sleepovers" would be only, or essentially, when he had emergency night calls. Dr. Mahler's position was that a person can have multiple residences although only one domicile, and that he would in the foregoing circumstances be a resident of the premises for

purposes of the home occupation provision of the zoning ordinance and might thus lawfully continue to carry on his dental practice in the place.

The board of adjustment rejected the applicant's interpretation of the ordinance. It decided that the spirit as well as the letter of the home occupation provision contemplated a professional use which was incidental to the primary function of the premises as the home of the occupant; that Dr. Mahler's home would be with his family in Glen Rock, not at the Fair Lawn address; and that the application was "clearly an attempt by subterfuge to meet the obvious intent and purpose of the ordinance in its requirements that the professional person must reside on the premises."

[1] The Law Division judge, citing cases involving inheritance taxation and voting requirements, ruled that residence is distinguishable from domicile and that "plaintiff may comply" with the ordinance "even though his family may live elsewhere." There was no express finding that under the postulated facts the building would constitute the plaintiff's private residence, as required by the ordinance, but such a finding is plainly inferable. We deem that conclusion erroneous. *State v. Mair*, 39 N.J. Super. 18, 120 A.2d 467 (App. Div. 1956); *Keller v. Town of Westfield*, 39 N.J. Super. 430, 121 A.2d 419 (App. Div. 1956); *Jankausch v. Borough of Verona*, 24 N.J. 326, 334, 131 A.2d 881 (1957).

*Keller v. Town of Westfield*, supra, is conclusive that under this kind of home occupation ordinance provision the rental of a portion of the building to others, as first proposed by this plaintiff, would invalidate the carrying on of a professional activity therein. If there is no such occupancy by others, then the "residential" use of a bedroom and den by the dentist, if indeed such occasional emergency sleep-

1. Since the other dentists did not reside at the premises, there is apparently some question as to whether their activities did

not constitute a violation of the ordinance, but this point has not been raised or argued.

ins as plaintiff described can be fairly deemed a true residential use of the building, would become purely incidental to the combining primary use of the premises for professional offices. That result would violate the plain intent and purpose of a homeowner provision of this type, as thoroughly demonstrated by this court and the Supreme Court in the cases cited above.

Although the facts in the *Mair* and *Keller* cases, supra (which involved a common factual background and zoning ordinance), are somewhat different from here,

the rationale of home occupation provisions as illuminated in those opinions is *a fortiori* applicable in the present case. In the *Keller* case the Westfield ordinance permitted the use of a building in a residential zone for the offices of specified categories of professionals "providing the person using the office resides in the building \* \* \*". The ordinance had previously, as pertinent to the issue in the *Mair* case, read, " \* \* \* provided such office or studio is accessory to and part of a residence." Both decisions held that the rental of part of the premises to others while the professional occupant and his wife lived elsewhere violated the ordinance. *Keller* additionally held that a variance for such use was unjustified under the "special reasons" provision of the statute. (As to this, more *infra*.) In *Mair* (39 N.J. Super, p. 22, 120 A.2d, at p. 489) we quoted *Assett on Zoning* (1940), p. 100, in support of the exposition that in the historic development of zoning, incidental uses were customarily permitted in relation to the principal uses to which the zoning district was restricted, and that since "The doctor, dentist, lawyer, or notary had from time immemorial used his own home for his office," such and comparable occupations were generally permitted in one's own home in residential districts. We stated, in relation to the ordinance there under construction, that "its obvious purpose was to preserve the residential character of the 'A' zone and to restrict the professional use of a dwelling to the person living therein."

Section 1(d) obviously was made purely for the convenience of professional people who normally operate from their homes." (at p. 23, 120 A.2d, at p. 489; emphasis added)

In *Jantausch v. Borough of Verona*, supra (primarily concerned with the question as to whether a beauty shop was a contemplated home occupation), where home occupations were allowed "incidental to the use as a residence, provided that such occupations shall be conducted solely by resident occupants of the building \* \* \*," the Supreme Court said:

"The ordinance in limiting the home occupations to such occupations as shall be conducted solely by resident occupants and requiring 'no display of products shall be visible from the street' indicates an intention to permit only such light occupations in the home that could not change the character of the building from a home to a business or industrial establishment. Cf. *Lamp v. Millburn Township*, 129 N.J.L. 221, 28 A.2d 767 (Sup.Ct.1942); *State v. Mair*, 39 N.J. Super. 18, 120 A.2d 487 (App.Div.1956). The primary use of the premises for the occupation must be residential and the 'home occupation' engaged in must be clearly incidental thereto. Thus, the 'home occupation' must be such, even though it be a gainful pursuit, as can, and must be carried on in a manner consistent with the use of the premises as a residence within the intent of the provisions of this particular ordinance." (24 N.J. at p. 334, 131 A.2d, at p. 885; emphasis added.)

In view of the foregoing, authorities, plaintiff cannot be permitted to carry on a dental practice in this building unless it is his home and its main use is as such. In addition to the reasoning in the authorities quoted above, it is evident that the very term "home occupation" in the ordinance lays bare that intent. Plaintiff's home is in Glen Rock, not Fair Lawn. The premises in question are no longer "his [Dr. Mahler's] private residence," as required by

and within the clear intent of the ordinance. At the very least, the main use of the building is no longer as such private residence but rather as a professional building. Any remaining residential use is purely incidental.

It is no answer to say that the external appearance of the building as a residence will not be changed by the departure of the family. This would be true of all residential buildings devoted in part to home occupations, but that does not gainsay the essentiality of the requirement that the main use of the building must be for the professional occupant's private residence.

## II

We next consider whether the decision of the board of adjustment to deny a recommendation for a "special reasons" variance under paragraph (d) of N.J.S.A. 40:55-39 was so unwarranted as to have called for nullification by the Law Division.

Basically, the argument for the applicant was that there were valid "special reasons" for the variance in that, as a dentist, he serves the general welfare of the community; that his departure from the area would cause him to lose his clientele and deprive them of his services; that he was unable to find other quarters in Fair Lawn large enough to carry on his practice and also to accommodate his family, or even quarters for dental offices alone; and that giving up this building as an office would entail a hardship in that he had recently made substantial expenditures to renovate it.

The case for satisfaction of the statutory "negative criteria," that there be findings by the board of no substantial detriment to the public good or substantial impairment of the zone scheme and plan, was attempted to be made by real estate expert testimony that neighborhood values would not deteriorate because the doctor was no longer living there with his family; that the property was situated within 800 feet of a major highway and within a block or so of a

trucking firm and a prospective new public library, and that the boundary of the nearest commercial zone under the ordinance was a block and a half away. (The latter assertion is not fairly borne out by inspection of the zoning map; see *infra*.)

On the other hand, the proofs indicate that most of the area consists of homes, although a number of such homeowners practice various professions therein. For example, a next door neighbor, a medical doctor, objected to the variance since he and other professionals were abiding by the ordinance and the grant of a variance would harm the neighborhood. Plaintiff's expert testified that the homes in the neighborhood ranged in value from \$18,000 to \$46,000, and that they were well maintained. The zoning map of Fair Lawn indicates that plaintiff's property is at the approximate center of the R-1-3 zone in which it is located, and that the zone extends a considerable distance both north and south of the subject property. However, in the east-west direction the zone is only four or five blocks wide in this specific area.

Before the Law Division plaintiff established that in July 1966 the planning board of Fair Lawn submitted a proposed master plan for the municipality which would include a rezoning of the area wherein the property here involved is situated so as to permit professional and office use on a 200-foot strip along both sides of Fair Lawn Avenue. No action had been taken by the mayor and council on the matter as of the hearing of this appeal. As of January 13, 1967, according to an affidavit of the borough attorney submitted at the court's request, the adoption of an ordinance to implement the proposed master plan had not been discussed by the mayor and council at either a "work session" or official meeting, or with the attorney.

The board of adjustment declined to recommend the variance. It rested its determination on pertinent findings of most of the facts aforesaid and on the following conclusions. Plaintiff's family expansion

is not a valid special reason to justify excusing the necessity under the ordinance that the family reside at the residence along with the professional occupant. Insofar as plaintiff relies upon the position that the practice of dentistry serves a public need, this is an obvious fact, but the governing body has amply and adequately provided for such services by the "home occupation" provision and permitting them in other zones. The board said:

"All doctors and dentists, as such, serve a public need; thus the same reason could be urged by all or some of these doctors and dentists for the use requested by applicant, and consequently the intent and purpose of the ordinance would be defeated and in its stead there would be created a professional building \* \* \*"

The board continued: There are other "home occupation" users in the neighborhood, all of whom are complying with the ordinance. The character of the neighborhood has been maintained and preserved as residential and the houses therein range in value from \$18,000 to \$46,000. The fact that there are two business zones adjoining the residential zone in which the premises are located cannot serve to relax the requirements of the ordinance and permit the requested uses. A "special reasons" variance based on the nearness of the business zones "would in effect be gradually changing the characteristics of a zoned locality by variance instead of legislative action." The requested variance would in effect "be creating a business or professional building." This would be "a serious departure from the intent and purpose of the ordinance" and would impair the zoning plan and scheme. The size of applicant's practice in conjunction with the traffic situation on Fair Lawn Avenue and the lack of parking space for employees and patients pose "serious questions of the public welfare and safety." For these reasons the ultimate conclusion was reached that the variance could not be granted without substantial detriment to the public good or impairment of the zone plan and ordinance.

On the variance issue, the Law Division judge merely stated:

"\* \* \* [T]he plaintiff produced sufficient evidence to establish the criteria under the statute. The continuation of his office without his wife and children would not impair the zoning plan and ordinance and would have no effect upon traffic and other conditions in the area and would not be detrimental to the public good. \* \* \* There are 'special reasons' which relate to this particular property and affect no other surrounding property. See *Yahnel v. Board of Adjustment of Jamesburg*, 79 N.J. Super. 509 [192 A.2d 177] (App.Div. 1963). Boards of Adjustment must take a practical approach to an individual problem."

We infer the court meant as "special reasons" those specified by plaintiff and mentioned above, i. e., the relationship of plaintiff's dental practice to the general welfare, and the hardship involved in changing the location of his practice.

The resolution of this phase of the appeal must center about two problems: (a) did special reasons exist here which could have justified the Board in recommending a variance, and (b) was the denial in this case so unjustified on the law and the facts as to have called for the reversal and mandate for variance by the court?

[2] Of the several permissible bases for a "special reasons" variance under paragraph (d) of section 39 of the statute (see *Bern v. Borough of Fair Lawn*, 65 N.J. Super. 435, 446-447, 168 A.2d 52 (App.Div. 1961)), plaintiff's main reliance here is upon the zoning criterion of the "promotion of the general welfare," a factor which, in a line of cases beginning with *Andrews v. Ocean Twp. Board of Adjustment*, 30 N.J. 245, 152 A.2d 580 (1959), has been held in itself sufficient to ground a (d) variance, provided, always, that the negative criteria of the statute are also satisfied. However, while *Andrews* indicates that no rigid formula can be devised to test a valid (d)

Cite as 227 A.2d 511

variance on general welfare grounds (30 N.J. at p. 251, 152 A.2d 580), the typical variances sustained on that basis heretofore have been for uses of institutional dimensions! *Andrews*, supra (parochial school); *Black v. Town of Montclair*, 34 N.J. 103, 167 A.2d 388 (1961) (parochial school); *Yahnel v. Board of Adjustment, Jamesburg*, 79 N.J. Super. 509, 192 A.2d 177 (App.Div. 1963), certification denied 41 N.J. 116, 195 A.2d 15 (1963) (telephone wire exchange); *Kunzler v. Hoffman*, 48 N.J. 277, 225 A.2d 321 (1966) (hospital for emotionally disturbed); see also *Kramer v. Board of Adjustment, Sea Girt*, 45 N.J. 268, 286, 290, 212 A.2d 153 (1965) (seaside hotel). In each of these cases the courts sustained grants of variances, holding there was no arbitrary or capricious action on the facts adduced. While one cannot say from these decisions that in order to warrant a variance based upon the "general welfare" criterion the use must necessarily be of institutional dimension, it would be safe to say, at the least, that a use of smaller scope should give a board of adjustment (and the governing body if called upon to approve a recommendation of variance) serious pause before allowing a variance justified only or primarily on the special reason of a relationship between the proposed use and promotion of the general welfare.

[3] It is obvious that almost all lawful uses of property in our society serve in greater or lesser degree the promotion of the general welfare. If the social benefits of any individual use were, on the basis of the general welfare concept, to be regarded as an adequate special reason for a (d) use variance, we would have, in effect, the untoward and clearly unintended consequence that variances could be awarded indiscriminately merely because they did not offend the negative criteria of the statute. See *Shaf v. Zoning Board of Adjustment, Ashbury Park*, 35 N.J. Super. 215, 222, 113 A.2d 843 (App.Div. 1955); cf. *Rockhill v. Clinterfield Twp.*, 23 N.J. 117, 128 A.2d 473 (1957). The affirmative statutory requirement of special reasons is no less integral to

the case for a variance than the negative criteria of absence of substantial detriment to the public good and impairment of the zone scheme and plan.

In a not too dissimilar situation, this court reversed the grant of a special reasons variance to allow a medical laboratory in part of a dwelling in a residential zone where the operator and his wife were to live elsewhere. Although the applicant had invested substantial sums in alterations of the property upon the basis of the previous grant of a building permit, apparently issued on the assumption that the use would be a home occupation allowed by the ordinance, the court in *Keller v. Town of Westfield*, supra (per Judge, now Justice, Francis) said:

"A departure from the requirement for residence in such cases is authorized only when it would be consistent with the spirit of the zoning plan and in harmony with N.J.S.A. 40:55-39(d). The record before us is barren of circumstances showing undue hardship or special reasons, within the legislative intentment. Accordingly, the grant of variance cannot be sustained." (39 N.J. Super., at p. 436, 121 A.2d, at p. 422)

[4, 5] In any case, however, the conclusive consideration here is that, whether or not the board could properly have granted a variance recommendation in this situation, there is utterly no basis for a judicial conclusion that it acted arbitrarily, capriciously or unreasonably in exercising its discretionary quasi-judicial powers by denying such a recommendation. And that is the controlling criterion on judicial review, whether the board grants or denies a variance. *Kramer v. Board of Adjustment, Sea Girt*, supra, 45 N.J., at pp. 296-297, 212 A.2d 153.

[6, 7] Our cases recognize that there is an area of special discretion reposed in the local agencies within which, in many situations, either the grant or denial of a (d) variance would be judicially sustained. The

board of adjustment weighs the facts and the zoning considerations, *pro* and *con*, and will be sustained if its decision comports with the statutory criteria and is founded in adequate evidence. See *Rain or Shine Box Lunch Co. v. Newark Board of Adjustment*, 53 N.J. Super. 252, 259, 147 A.2d 67 (App. Div. 1958); *Yahnel v. Board of Adjustment*, *Jamestown*, supra, 79 N.J. Super. at p. 519, 192 A.2d 177.

[8] Moreover, as we stated in *Cummins v. Board of Adjustment*, *Leonia*, 39 N.J. Super. 452, 460, 121 A.2d 405, 410 (App. Div. 1956), the judicial philosophy of sympathetic approach to local zoning decisions (*Ward v. Scott*, 16 N.J. 16, 23, 105 A.2d 881 (1955)) is "even more cogently applicable to a case where we review a denial of a variance than where we review a grant, for generally speaking more is to be feared from a breakdown of a zoning plan by ill-advised grants of variances than by refusals thereof," citing *Bein v. Morris*, 14 N.J. 529, 536, 103 A.2d 361 (1954). Cf. *Wilson v. Borough of Mountainside*, 42 N.J. 426, 443, 201 A.2d 540 (1964).

In the present case the board made a full and complete exposition of the facts and reasoning for its conclusion that a grant of variance would offend the zone scheme in substantial particulars, and that the "special reasons" advanced were not persuasive.

[9, 10] As to the pending master plan, one aspect of which, if adopted, would convert Fair Lawn Avenue in this zone to professional and office use, the board was bound to deal with the application on the basis of the zone districting as it then stood. And we are bound to deal with it as it now stands. There is as yet no change. No one can say whether, when, or to what extent the recommended master plan will be implemented by ordinance. There may well be opposition to this phase of it by the homeowners in the area on any hearing on the proposal. In the interests of fairness, however, and the borough having consented thereto, we shall accede to plaintiffs' alternative request, made after oral argument,

that we stay the reversal mandate in this case for a period of six months so that the plaintiff may have an opportunity to avail himself of any permissive zone change, if any, which may be adopted in the interim by the borough.

Reversed; mandate on reversal stayed for a period of six months from date.

FOLEY, J. A. D. (dissenting).

I agree with the majority that upon the facts of this case the trial court was without warrant to overturn the factual findings of the board of adjustment that "special reasons" for a variance were not established. Compare *Keller v. Town of Westfield*, 39 N.J. Super. 430, 121 A.2d 419 (App. Div. 1956).

However, I dissent from the majority's holding that on the facts presented the ordinance should be construed, in effect, to prohibit the carrying on of plaintiffs' dental practice unless the premises are occupied by the doctor and his family as their home. The majority places reliance upon an *a fortiori* application of *Keller*, supra, and *State v. Mair*, 39 N.J. Super. 18, 120 A.2d 487 (App. Div. 1956), the subject matter of which was the same property involved in *Keller*. The *Keller* case, while relevant to the majority's determination of the variance issue, has bearing upon the construction of the ordinance only to the extent that the *Keller* court accepted the conclusion reached in *Mair* that under the ordinance there construed, residence in the building by the professional person was a prerequisite to the maintenance of an office therein. In *Mair* the court held that *rental* of the residence portion of the premises to another (not contemplated here) did not comply with the ordinance, since the residence requirement was limited to residence by the person operating the accessory professional use. Neither case went so far as to define the degree of residence required, or to suggest that the residence be the exclusive residence of the professional occupant and his family.

It clearly appears that neither the external appearance of the premises in question, nor its internal functions will be changed in the slightest as respects the zoning scheme if plaintiff and his family live elsewhere, and plaintiff makes occasional use of the premises for residential purposes. The property presently appears to be a residence dwelling properly, and will continue to so appear. The extent of the interior use for professional purposes area wise is limited by the provisions of the ordinance. The residence portions will simply remain vacant unless the doctor or his family occasionally choose to use them. Therefore, I see no discernible benefit in aid of the zoning plan to be accomplished by the majority's strictly literal interpretation of the language of the ordinance. On the other hand, a more liberal interpretation which would do no violence to the zoning plan would permit the doctor to maintain his practice to the benefit of the community, and accommodate his expanding family in accordance with its needs, by accepting as being qualified under the ordinance his exclusive, though limited, occupation of the portions of the premises which are reserved for residential purposes.

All that is necessary to accomplish this purpose is to equate the ordinance words "used by him as his private residence" to "used by him as a private residence." (Emphasis added) The wording of the ordinance admits of this interpretation since it does not specifically proscribe the occupant of the premises from having two residences, in one of which, other than that partially devoted to his professional activities, he maintains his family in the family "home."

It seems to me that the increasingly liberal approach taken by our courts in favor of individuals where their rights come in conflict with a governmental authority or regulation, at least suggests that where the intent of an ordinance is subject to doubt, and where the equities are predominantly, if not exclusively, on the

side of the individual, a construction in his favor should be adopted. I strongly believe that this is such a case.

I agree with the majority that the master plan presently before the governing body and which, beyond question, would permit the requested use, not having been adopted by the governing body to date, is unenforceable of the case. However, I think that this presumably authoritative recommendation of the planning board, based upon the views of experts retained by the municipality, may be taken into consideration as one weighs the improbability of adverse effect upon the zoning scheme if the present ordinance is liberally construed in favor of plaintiff in order to prevent what appears to me to be a manifest injustice to him, without corresponding benefit to the welfare of the community.

I would affirm.



94 N.J. Super. 189  
In the Matter of the ESTATE of Frank  
SILVERMAN, Deceased.  
Nos. A-1216, A-1068.

Superior Court of New Jersey  
Appellate Division.

Argued Feb. 27, 1967.  
Decided March 13, 1967.

Proceeding on appeal and cross-appeal from Monmouth County Court, Probate Division, ruling sustaining validity of marriage between decedent and his wife and denying relief to decedent's brother who sought to remove wife as administratrix. The Superior Court, Appellate Division, *Kalorsky, J. A. D.*, held that misrepresentation as to prospective bride's residence did

**MAHLER v. BOARD OF ADJUSTMENT OF BOR. OF FAIR LAWN N. J. 705**

Cite as 258 A.2d 705

more recently in terms of strict liability in tort. *Henningsen v. Bloomfield Motors, Inc.*, supra, 32 N.J. at 406, 161 A.2d 69; *Higbee v. Giant Food Shopping Center, Inc.*, 106 F.Supp. 586 (D.C.Va.1952); *Vandermark v. Ford Motor Company*, 61 Cal.2d 256, 37 Cal.Rptr. 896, 391 P.2d 168, 171-172 (1964); *Graham v. Bottenfield's, Inc.*, 176 Kan. 68, 269 P.2d 413 (1954); *McKisson v. Sales Affiliates, Inc.*, 416 S.W.2d 787 (Tex.Sup.1967); 2 Restatement, supra, comment f, p. 350; Harper & Jones, Torts, § 28.30, p. 1600 (1956). As Chief Justice Traynor noted in *Vandermark*, supra, retailers are engaged in the distribution of goods to the public. They select the manufacturer whose products they wish to sell, and thus they become part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products. Moreover, from a practical standpoint the strict liability of the dealer may move him to put pressure on the manufacturer to make the products safe.

[12, 13] Strict liability to the injured consumer does not leave the dealer without remedy. He has an action over against the manufacturer who should bear the primary responsibility for putting defective products in the stream of trade. Considering the overall problem of prosecuting products liability cases, it would seem to make sense procedurally to have the plaintiff's cause of action whenever possible adjudicated in one action against manufacturer and retailer. If the plaintiff sues the dealer alone, the dealer in his own interest should implead the manufacturer and thus avoid circuity of action. Service of process on the manufacturer may present a problem occasionally. But here recourse may be had to the long-arm service rule, R. 4:4-4(c) (1), (e), with its obvious implications of liberal application. Its use may overcome the difficulty in most cases.

[14] Accordingly, in light of all of the above, and particularly the testimony of the plaintiffs' dermatologist attributing the

hair and scalp injury to the permanent wave solution, in our judgment a factual issue was presented at trial for jury determination as to (1) whether the permanent wave solution was defective, and (2) whether it was the proximate cause of the dermatitis. An affirmative answer by the jury would warrant a verdict for the plaintiffs.

The judgment of the Appellate Division is affirmed for the reasons stated, and the cause is remanded for a new trial.

For affirmance: Chief Justice WEINTRAUB and Justices JACOBS, FRANCIS, PROCTOR, HALL, SCHETTINO and HANEMAN—7.

For reversal: None.



55 N.J. 1

Arthur F. MAHLER, Plaintiff-Appellant,

v.

The BOARD OF ADJUSTMENT of the BOROUGH OF FAIR LAWN and the Borough of Fair Lawn, Defendants-Respondents.

Supreme Court of New Jersey.

Argued Nov. 17, 1969.

Decided Dec. 1, 1969.

On appeal from a judgment of the Superior Court, Appellate Division, whose opinions are reported at 94 N.J.Super. 173, 227 A.2d 511.

James A. Major, Hackensack, for appellant (Major & Major, Hackensack, attorneys).

Robert L. Garibaldi, Union City, for respondents (Floyd V. Amoresano, Pater-son, attorney).



## PER CURIAM.

The judgment is affirmed for the reasons expressed in the majority opinion of Judge Conford in the Appellate Division.

For affirmance: Chief Justice WEINTRAUB, and Justices JACOBS, FRANCIS, PROCTOR, HALL, SCHETTINO and HANEMAN—7.

For reversal: None.



55 N.J. 2

Joyce N. DOLSON and Ben Dolson, Jr.,  
Plaintiffs-Appellants,

v.

Casper ANASTASIA, Defendant-Respondent.

Supreme Court of New Jersey.

Argued Sept. 9, 1969.

Decided Nov. 17, 1969.

Motor vehicle rear end collision case. The jury returned a verdict of no cause of action and the trial court denied plaintiffs' motion for new trial made on ground that verdict was against weight of evidence. The Superior Court, Appellate Division, affirmed. On appeal, the Supreme Court, Hall, J., held that in reviewing a trial court's action on a motion for a new trial following a jury verdict, the appellate court must give deference to views of trial judge on those factors in case such as witness' credibility, "demeanor" and "feel of the case" as to evaluation of which trial judge was peculiarly situated to determine, but the trial judge's decision is not entitled to any special deference where it rests upon the determination as to worth, plausibility, consistency or other tangible considerations apparent from face of record in respect to which trial

judge is no more peculiarly situated to decide than the appellate court.

Judgments reversed and case remanded for new trial.

1. New Trial  $\S$  72

Motion for new trial after jury verdict as against weight of evidence may be properly granted although the state of evidence would not justify the direction of a verdict. R. 4:49-1(a).

2. Appeal and Error  $\S$  1015(1)

In reviewing a trial court's action on a motion for a new trial following a jury verdict, the appellate court must give deference to views of trial judge on those factors in case such as witness' credibility, "demeanor" and "feel of the case" as to evaluation of which trial judge was peculiarly situated to determine, but trial judge's decision is not entitled to any special deference where it rests upon the determination as to worth, plausibility, consistency or other tangible considerations apparent from face of record in respect to which trial judge is no more peculiarly situated to decide than the appellate court; disapproving Hartpence v. Grouleff, 15 N.J. 545, 105 A.2d 514, and Kulbacki v. Sobchinsky, 38 N.J. 435, 185 A.2d 835. R. 4:49-1(a).

3. Automobiles  $\S$  172(7), 246(11)

A following automobile in same lane of traffic is obligated to maintain a reasonably safe distance behind the automobile ahead, having due regard to the speed of the preceding vehicle and the traffic upon and condition of the highway, and failure to do so, resulting in a collision, is negligence and not only evidence of negligence and jury should be so instructed. N.J.S.A. 39:4-89.

4. Automobiles  $\S$  201(1)

Absent testimony by following motorist that he was in any way misled by alleged failure of leading motorist to signal her intention to turn left, there was no causal connection between alleged failure and the collision. N.J.S.A. 39:4-89.

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J. CARROLL HOLZER, PA  
THOMAS J. LEE  
J. HOWARD HOLZER  
1907-1989

TOWSON OFFICE  
305 WASHINGTON AVENUE  
SUITE 502  
TOWSON, MD 21204  
(410) 825-6961  
FAX: (410) 825-4923

CARROLL COUNTY OFFICE  
1315 LIBERTY ROAD  
ELDERSBURG, MD 21784  
(410) 795-8556  
FAX: (410) 795-5535

December 1, 1994

Arnold Jablon, Director  
Zoning Administration and  
Development Management  
County Office Building  
Chesapeake Ave.  
Towson, Maryland, 21204

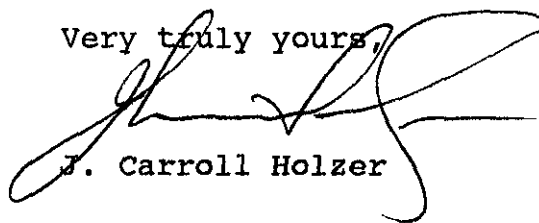
Re: Petition for Special Hearing  
W/S York Rd. and Chumleigh Rd.  
(7100) York Rd.  
Mark Jenkins, et ux, Petitioners  
Case No. 95-95- SPH

Dear Mr. Jablon:

On behalf of Rodgers Forge Community Association, Inc. and Honey Holston, individually, undersigned hereby notes an appeal to the County Board of Appeals from the decision of the Zoning Commissioner in the above referenced case decided on November 2, 1994.

Enclosed please find a check to cover the cost of the appeal.

Very truly yours,



J. Carroll Holzer

JCH:clg  
cc: County Board of Appeals  
People's Counsel for Baltimore County

RECEIVED

DEC 1 1994

ZADM

RECORDED



PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

Charles E. Jenkins  
address c Jenkins  
J. CALVIN JENKINS SR.  
Margaret Litaras

426 CHUMLEY RD  
526 Anneslie Rd.  
818 HATHERLEIGH ROAD - 21212  
9003 Brian Rd - 21234

Paul Lee  
Mark P. Jenkins

304 W. Pennsylvania Ave 2104  
526 Anneslie Rd Rotts Rd 21012



Case No. 95-95-SPH

Mark Jenkins, et ux - Petitioners

W/s York Road and Chumleigh Road  
(7100 York Road)

9th District

Appealed: 12/1/94

## ORIGINAL

1 IN THE MATTER OF THE \* BEFORE THE  
2 APPLICATION OF \* COUNTY BOARD OF APPEALS  
3 MARK P. JENKINS, et ux \* OF BALTIMORE COUNTY  
4 for special hearing on \* Case No. 95-95-SPH  
5 property located on the \* April 27, 1995  
6 west side of York Road \*  
7 and Chumleigh Avenue \*  
8 (7100 York Road) \*

9 \* \* \* \* \*

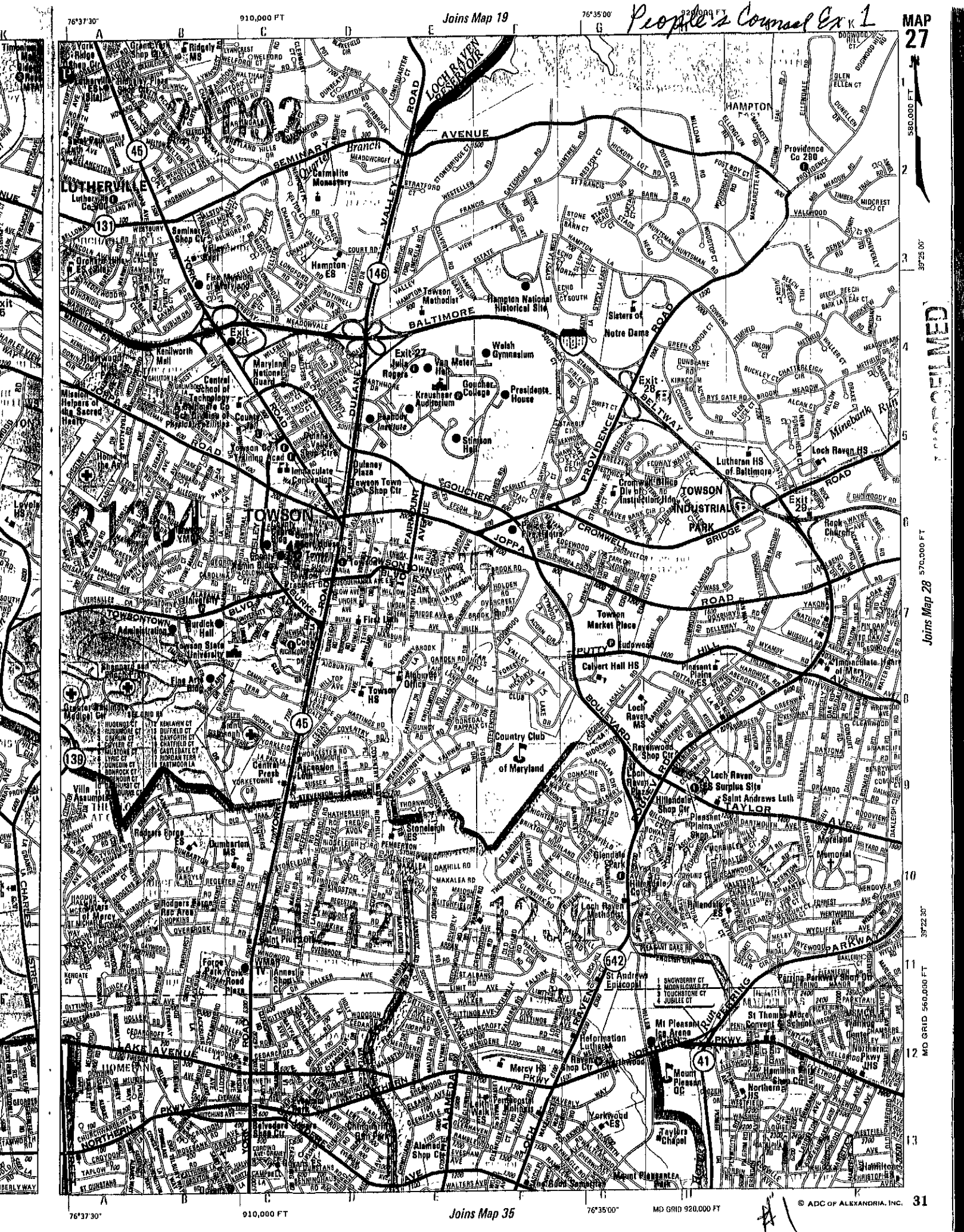
10 The above-entitled matter came on for hearing  
11 before the County Board of Appeals of Baltimore County at  
12 the Old Courthouse, 400 Washington Avenue, Towson,  
13 Maryland 21204 at 10 o'clock a.m., April 27, 1995.

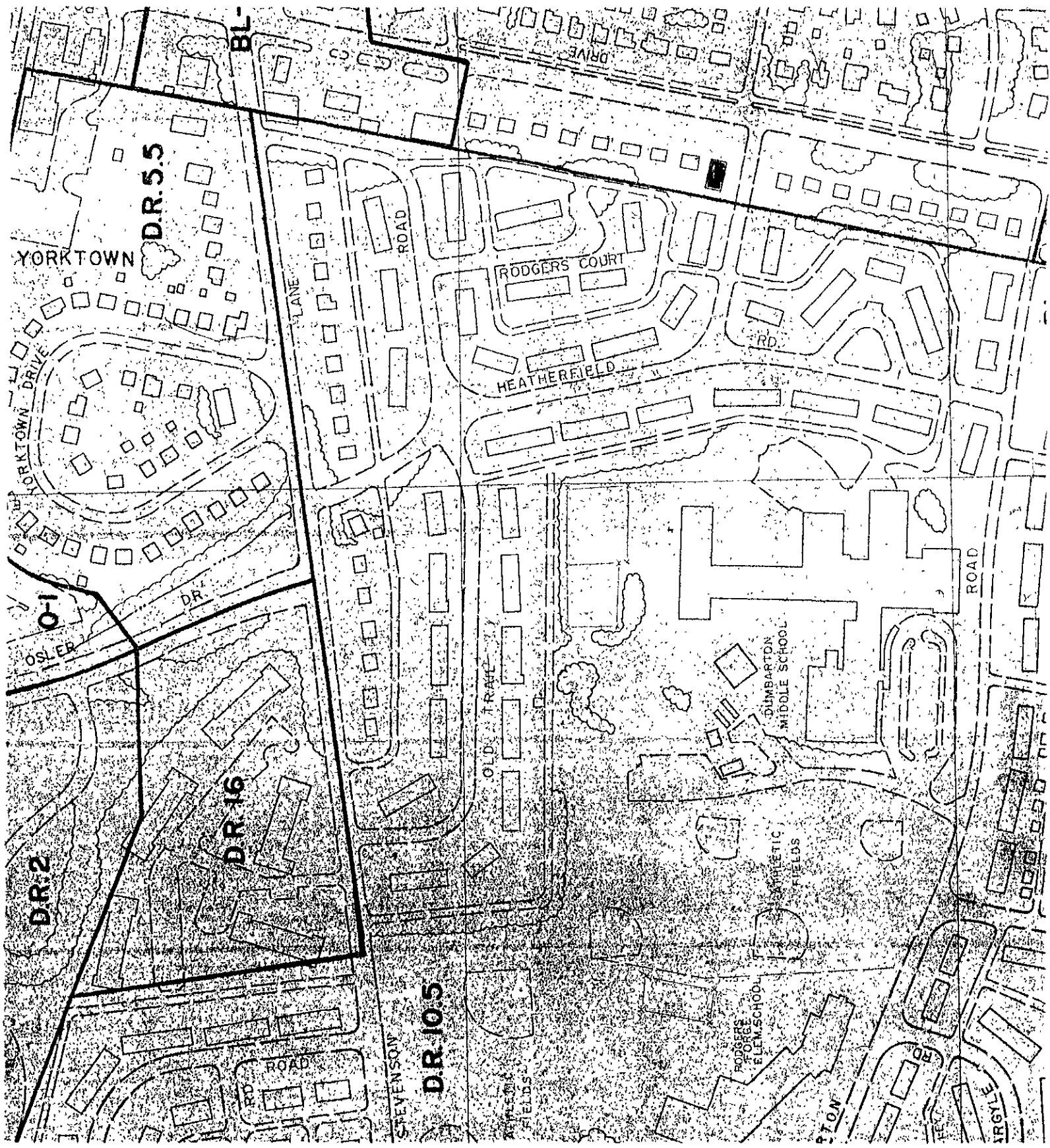
14  
15 \* \* \* \* \*

16  
17  
18  
19  
20 Reported by:

21 C.E. Peatt

RECEIVED



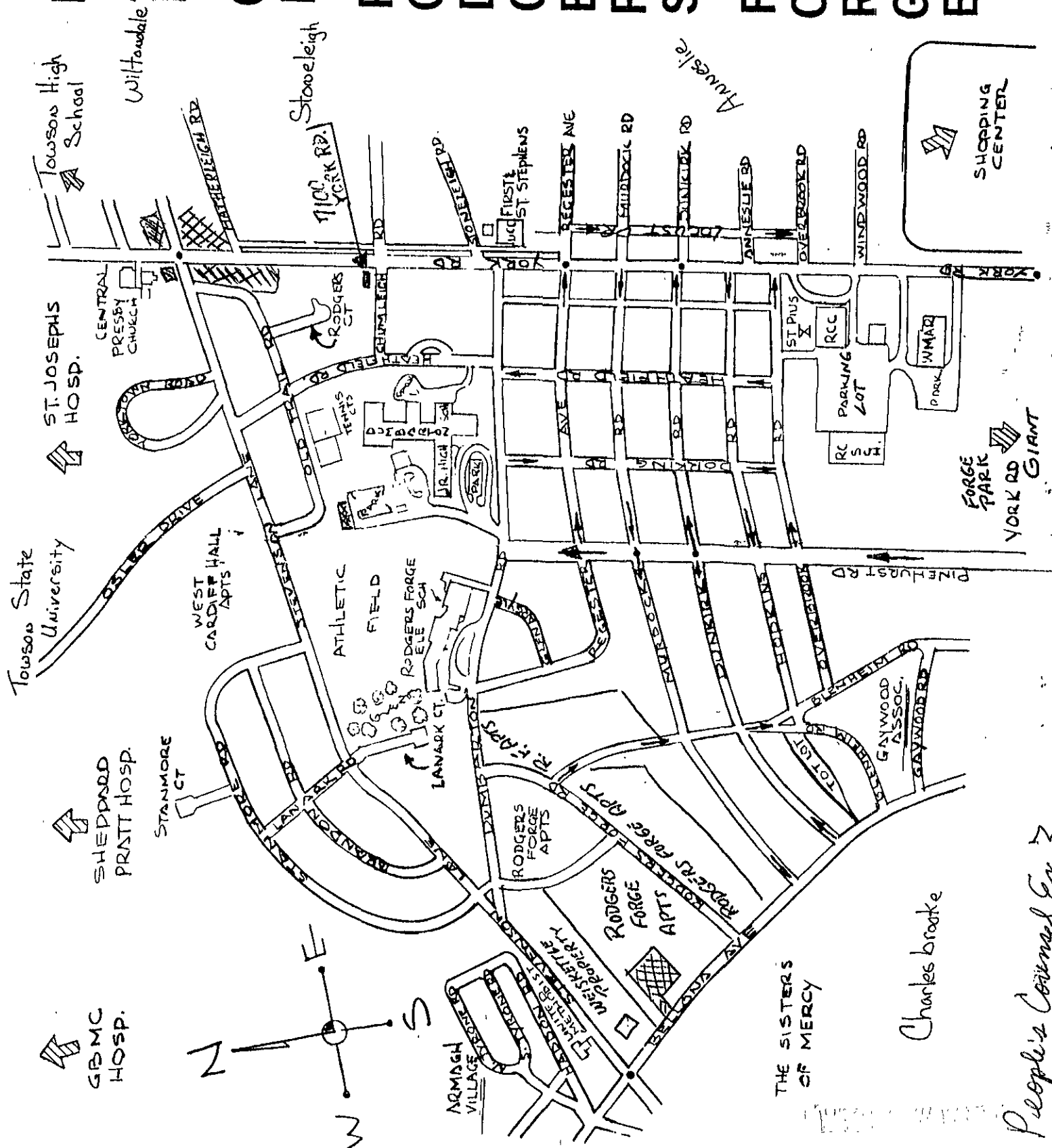


JENKINS

UNOFFICIAL

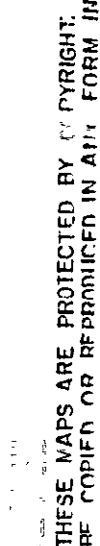
People's Counsel Ex. 2

# M A P OF RODGERS FORGE



Charles Drake

Peoples Counsel Ex. 3



MAP 69-P.269  
1904243mN  
432944.lmE

MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION  
REAL PROPERTY SYSTEM  
BALTIMORE COUNTY

04/18/95

PRIMARY SCREEN

DISTRICT: 09 ACCT NO: 0904201420

SUBDIST:

OWNER NAME / MAILING ADDRESS

JENKINS MARK P  
JENKINS ADRIENNE  
7100 YORK RD  
BALTIMORE

MD 21212-1525

DEED REF 1) / 5639/ 23  
2)

PLAT REF 1) 19/ 56

EXEMPT STATUS/CLASS  
0 000

PRINCIPAL  
RESIDENCE  
YES

PREMISE ADDRESS

7100 YORK RD

TOWN	GEO	ADVAL	TAX	LAND	COUNTY
CODE	CODE	CODE	CLASS	USE	USE
000	81	000		R	04

LEGAL DESCRIPTION

MAP	GRID	PARCEL	SUB-DIV	PLAT	SECT	BLOCK	LOT
70	19	718			12	3	10

RODGERS FORGE

TRANSFERRED FROM: DEARDORFF PHILIP C

06/02/76

\$85,000

PRESS: <F1> VALUES SCRIN

<F3> SELECT NEXT PROPERTY

MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION  
REAL PROPERTY SYSTEM  
BALTIMORE COUNTY

04/18/95

VALUES SCREEN

DISTRICT: 09 ACCT NO: 0904201420

SUBDIST:

OWNER NAME: JENKINS MARK P

TOWN CODE: 000

	BASE VALUE	CURRENT VALUE AS OF 01/01/93	PHASE-IN VALUE AS OF 07/01/95	PHASE-IN ASSESSMENTS AS OF 07/01/94	ASSESSMENTS AS OF 07/01/95
LAND :	39,620	40,870			
IMPT :	163,840	140,320			
TOTAL :	203,460	181,190	181,190	72,470	72,470

PREF LAND:	0	0	0	0	0
------------	---	---	---	---	---

PRIMARY STRUCTURE DATA

PARTIAL EXEMPT ASSESSMENTS

YEAR BUILT ENCLOSED AREA  
1956 2,784 SF

CODE	07/01/94	07/01/95
COUNTY 000	0	0
STATE 000	0	0
MUNICIPAL 000	0	0

LAND AREA: 10,500.000 SF

PRESS: <F1> PRIMARY SCRIN

<F3> SELECT NEXT PROPERTY

MICROFILMED

People's Counsel #5



MLS# (BC)103409

7100 York Road  
Rodgers Forge

--- A c t i v e ---

Zip: 21204 Map: BC27C10  
Gr. Cap: \$0

-1- Residential

List: \$275,000  
Ground Rent: \$0

Desc. : Colonial 2 Levels Detached 2 Bedrooms 2/0 BATHS  
: Age: Unknown Brick Home Asph Sh Roof

Rooms : Very Unique Property  
Floor : Formal LRoom Entry/Closet Formal Dr  
Ament. : Wood Floors Shades Blinds Lgt Fixtures Built-Ins  
: Incl Doc Ofc  
Lwr Lvl : F/Part Imprv  
Heat : Fuel-Gas Central A/C 2+ Fireplace

Site : Corner Lot  
Lot : Full Lower Level  
Utils. : Public Water Public Sewer Public Gas

Ann. Fees: TX: \$2,500

Show : Call Office Poss: Negot

Dir. : This Property Has Been Used As A Dentist/Residence For 40+  
Remarks : Years And Is Best Suited For Professional Use. Purchaser To  
: Live On Premises. Owner Will Hold A Substantial 2Nd. 1St Fl  
: 1400 Sq Ft. 2Nd Fl Living Same. C/L Scott Haupt 453-0010

DU: N BB: Y BB1: SU: SU1: SV: TL: ER  
LA: Dan Betsher PH: ( ) 821-6404 CO: 3.5  
B#: 6342 Long & Foster Real Estate PH: (410) 583-9400 MLS# (BC) 103409

All information is deemed reliable but not guaranteed by the Broker or MARIT  
-- Copyright (C) 1994 By Mid-Atlantic Real Estate Information Technologies --  
===== Run Date: 11/21/94 =====

*People's Counsel #6*

RECEIVED

*People's Counsel #7*

# BALTIMORE COUNTY ZONING REGULATIONS

AS AMENDED THROUGH OCTOBER 10, 1974

1975 EDITION

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING  
TOWSON, MARYLAND

FILED

Published by the Baltimore County Office of Planning and Zoning  
Towson, Maryland 21204  
First edition published 1955

Printed by Central Reproduction Services Division,  
Baltimore County Office of Central Services

1975

Section 1B01—REGULATIONS WITH RESPECT TO D.R. ZONES IN GENERAL.  
[Bill No. 100, 1970.]

1B01.1—General Use Regulations in D.R. Zones. [Bill No. 100, 1970.]

A.<sup>1</sup> Uses Permitted as of Right. The following uses, only, are permitted as of right in D.R. zones of all classifications, subject to the restrictions hereinafter prescribed:

1. Dwellings, including, but not limited to, one-family detached houses, one-family semi-detached houses, one-family group houses, patio houses, side-and-back-attached houses, two-family houses, town-house apartment buildings (including group-house apartment buildings), garden apartment buildings, and other apartment buildings
2. Trailers (see Section 415)
3. Churches, other buildings for religious worship, or other religious institutions.
4. Above-ground electrical-power, telephone, or telegraph lines, except above-ground electrical-power lines having a capacity of 35 kilovolts or more; pole-mounted transformers or transformer banks
5. Other cables; conduits; gas, water, or sewer mains; or storm-drain systems: all underground
6. Excavations, uncontrolled (as defined in Section 101)
7. Farms or limited-acreage wholesale flower farms (see Section 404)
8. Garages, community
9. Hospitals (see Section 407)
10. Local open space tracts or other common amenity open space
11. Research institutes, provided that no such use permitted hereunder (as of right) shall be established on any site less than 15 acres in net area, and that any such use shall be established in accordance with the provisions of Subsection 418.2
12. Schools, except business or trade schools or such schools as are permitted by special exception (see Paragraph C, below), but including schools for agricultural training
13. Signs, non-accessory, to the extent permitted under Section 413
14. Accessory uses or buildings other than those permitted only by special exception, including, but not limited to:
  - a. Accessory radio or television receiving antennas
  - b. Wireless transmitting and receiving structures, provided that any such structure: is a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission; if it is an independent structure, shall be subject to the same requirements as are applied to buildings under Section 400; if it is a rigid-structure antenna, shall be no higher than 50 feet above grade level and with no supporting structure

*1. All provisions of this paragraph from Bill No. 100, 1970.*

thereof closer than 10 feet to any property line; and does not extend closer to the street on which the lot fronts than the front building line

- c. Automotive-service stations, but only within community garages (see Section 405)
- d. Home occupations, as defined in Section 101
- e. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's bona fide residence; does not occupy more than 25 per cent of the total floor area of such residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees
- f. Parking spaces, including accessory garage spaces
- g. Offices for the conduct of business incidental to the rental, operation, service, or maintenance of apartment buildings
- h. Accessory signs (see Section 413)

**B. Dwelling-Type and Other Supplementary Use Restrictions Based on Existing Subdivisions<sup>2</sup> and Development Characteristics. [Bill No. 100, 1970.]**

**1. Residential Transition Areas and Uses Permitted Therein.**

**a. Definitions. For the purposes of this article:**

- 1. A residential transition area is any D.R. 1, D.R. 2, D.R. 3.5, D.R. 5.5, or D.R. 10.5 zone or part thereof which lies (a) within 300 feet of any point on a dwelling other than an apartment building, or (b) within 250 feet of any point lying within a vacant lot of record which is itself wholly or partially classified as D.R. and which is two acres or less in area.
- 2. A residential transition use is any one of the uses listed as such in the following table and hereby classified as set forth therein:

[ Table on next page. ]

<sup>2</sup>. Thus (as plural noun) in Bill No. 100, 1970.

Messrs. Hickernell & Huddles, Councilmen

By the County Council, June 21, 1982

A BILL  
ENTITLED

AN ACT concerning

Zoning Regulations - Offices of Professional Persons

FOR the purpose of

authorizing offices or studios of certain professional persons as a matter of right as an accessory use in the person's ~~domestic~~ primary residence in the R.C. zones of the County, subject to certain restrictions; ~~authorizing such offices or studios in-- certain-D.R.-zones-of-the-County-as-a-matter-of-right,-subject-to-certain-restrictions---~~ in the R.C. Zones of the County by special exception, subject to certain restrictions; repealing the authorization for such offices or studios as a matter of right in the D.R. Zones of the County; and authorizing such offices or studios by special exception in certain D.R. zones of the County, subject to certain restrictions.

BY repealing and re-enacting, with amendments,

Paragraphs 7.d., 10.d., 6.d., 11.d., ~~and 14.e.-~~  
Subsections 1A01.2.B., 1A02.2.A., 1A03.3.A., 1A04.2.A., ~~and 1B01.1.A.,~~ respectively  
Baltimore County Zoning Regulations, as amended

BY adding

Paragraphs 12A, 16A, 7B and 10A  
Subsections 1A01.2.C., 1A02.2.B., 1A03.3.B. and 1A04.2.B., respectively,  
Baltimore County Zoning Regulations, as amended

BY repealing

Paragraph 14.e.  
Subsection 1B01.1.A.  
Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report from the Planning Board concerning the subject legislation and has held a public hearing thereon, now, therefore

1. SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND,
2. MARYLAND, that Paragraphs 7.d., 10.d., 6.d., and 11.d., ~~and 14.e.-~~ of Subsections
3. 1A01.2.B., 1A02.2.A., 1A03.3.A., and 1A04.2.A. ~~and 1B01.1.A.,~~ respectively, of the
4. Baltimore County Zoning Regulations, as amended, be and they are hereby repealed
5. and re-enacted, with amendments, to read as follows:
6. Section 1A01-R.C. 2 (AGRICULTURAL) ZONES
7. 1A01.2.B

EXPLANATIONS: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter stricken from existing law.  
~~Strike-out~~ indicates matter stricken from bill.  
Underlining indicates amendments to bill.

MICROFILMED

1. Uses permitted as of right. The following uses, only, are permitted  
2. as of right in all R.C. 2 zones:  
3. 7. Accessory uses or structures, including, but not limited to, the  
4. following:  
5. d. Offices or studios of physicians, dentists, lawyers, architects,  
6. engineers, artists, musicians, or OTHER PROFESSIONAL persons [engaged  
7. in other, similar occupations], provided that [the use] ANY SUCH OFFICE  
8. OR STUDIO is established within the SAME building AS that [serves as the  
9. the owner's domicile; occupies a floor area no greater than 25% of the  
10. floor area used for residential purposes, not including garage floor  
11. area or unfinished basement space; and does not involve the employment  
12. of more than 2 non-residents.] SERVING AS THE PROFESSIONAL PERSON'S BONA-  
13. -FIDE PRIMARY RESIDENCE; DOES NOT OCCUPY MORE THAN 25 PER CENT OF THE  
14. TOTAL FLOOR AREA OF THAT RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT  
15. OF MORE THAN ONE NON-RESIDENT PROFESSIONAL-ASSOCIATE-NOR-TWO-OTHER---  
16. NON-RESIDENT-EMPLOYEES-- EMPLOYEE.

17. Section 1A02 - R.C. 3 (DEFERRAL OF PLANNING AND DEVELOPMENT) ZONES

18. Section 1A02.2 - Use regulations

19. A. Uses permitted as of right. The following uses, only, are permitted  
20. as of right in R.C. 3 zones:

21. 10. Accessory uses or structures including, but not limited to the  
22. following:  
23. d. Offices or studios of physicians, dentists, lawyers, architects,  
24. engineers, artists, musicians, or other professional persons, pro-  
25. vided that any such office or studio is established within the same  
26. building as that serving as the professional person's bona-fide PRIMARY  
27. residence; does not occupy more than 25 per cent of the total floor  
28. area of that residence [as it existed on the effective date of this  
29. provision]; and does not involve the employment of more than one non-  
30. resident professional-associate-nor-two-other-non-resident-employees---  
30a. EMPLOYEE.

31. Section 1A03 - R.C. 4 (WATERSHED PROTECTION) ZONES

32. 1A03.3 - Use regulations

33. A. Uses permitted as of right. The following uses, only are permitted  
34. as of right in R.C. 4 zones:

35. 6. Accessory uses or structures, including, but not limited to the  
36. following:

37. d. Offices or studios of physicians, dentists, lawyers, architects,  
38. engineers, artists, musicians, or other professional persons, provided

1. that any such office or studio is established within the same  
2. building as that serving as the professional person's ~~bona-fide~~ PRIMARY  
3. residence; does not occupy more than 25 percent of the total floor  
4. area of that residence [as it existed on the effective date of this  
5. provision]; and does not involve the employment of more than one  
6. non-resident professional-associate nor two other non-resident-----  
7. employees--EMPLOYEE.

8. Section 1A04 - R.C. 5 (RURAL-RESIDENTIAL) ZONE  
9. 1A04.2 - Use Regulations

10. A. Uses permitted as of right. The following uses, only, are permitted  
11. as of right in R.C. 5 zones:

12. 11. Accessory uses or structures, including, but not limited to, the  
13. following:

14. d. Offices or studios of physicians, dentists, lawyers, architects,  
15. engineers, artists, musicians or other professional persons, pro-  
16. vided that any such office or studio is established within the same  
17. building as that serving as the professional person's ~~bona-fide~~ PRIMARY  
18. residence [as it existed on the effective date of this provision];  
19. DOES NOT OCCUPY MORE THAN 25 PERCENT OF THE TOTAL FLOOR AREA OF THAT  
20. RESIDENCE and does not involve the employment of more than one non-  
21. resident professional-associate nor two other non-resident-employees

21a. EMPLOYEE.  
22. ~~Section 1B01 - REGULATIONS WITH RESPECT TO D.R. ZONES IN GENERAL-----~~

23. ~~1B01.1 - General Use Regulations in D.R. Zones-----~~

24. ~~A. Uses Permitted as of Right. The following uses, only, are permitted-----~~  
25. ~~as of right in D.R. zones of all classifications, subject to the re----~~  
26. ~~strictions hereinafter prescribed:-----~~

27. ~~14. Accessory uses or buildings other than those permitted only by----~~  
28. ~~special exception, including, but not limited to:-----~~

29. ~~e. IN D.R. 1, D.R. 2, D.R. 3, 5 AND D.R. 5.5 ZONES ONLY; offices or studios--~~  
30. ~~of PHYSICIANS, DENTISTS, lawyers, architects, engineers, artists, musicians,---~~  
31. ~~or other professional persons, [not including physicians and dentists,]----~~  
32. ~~provided that any such office or studio is established within the same-----~~  
33. ~~building as that serving as the professional person's bona-fide resi-----~~  
34. ~~dence; does not occupy more than 25 per cent of the total floor area-----~~  
35. ~~of such residence; and does not involve the employment of more than-----~~  
36. ~~one non-resident employee,-----~~

37. SECTION 2. AND BE IT FURTHER ENACTED, that Paragraphs 12A, 16A, 7B

38. and 10A be and they are hereby added to Subsections 1A01.2.C., 1A02.2.B.,



1. 1A03.3.B. and 1A04.2.B., respectively, of the Baltimore County Zoning Regulations,  
2. as amended, to read as follows:

3. Section 1A01 - R.C. 2. (AGRICULTURAL) ZONES

4. 1A01.2 - Use Regulations.

5. C. Uses permitted by Special Exception. The following uses, only, may  
6. be permitted by special exception in any R.C. 2 zone, provided that in each case  
7. the hearing authority empowered to hear the petition finds that the use would  
8. not be detrimental to the primary agricultural uses in its vicinity; and, in  
9. the case of any use permitted under Item 24, further provided that the hearing  
10. authority finds that the use would support the primary agricultural use in its  
11. vicinity and would not itself be situated on land more appropriately used for  
12. primary agricultural uses:

13. 12A. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS,  
14. ENGINEERS, ARTISTS, MUSICIANS, OR OTHER PROFESSIONAL PERSONS AS AN ACCESSORY  
15. USE, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME  
16. BUILDING AS THAT SERVING AS THE PROFESSIONAL PERSON'S BONA-FIDE PRIMARY RESI-  
17. DENCE; DOES NOT OCCUPY MORE THAN 25 PER CENT OF THE TOTAL FLOOR AREA OF THAT  
18. RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NON-RESIDENT  
19. PROFESSIONAL ASSOCIATE NOR TWO OTHER NON-RESIDENT EMPLOYEES.

20. Section 1A02 - R. C. 3 (DEFERRAL OF PLANNING AND DEVELOPMENT) ZONES.

21. 1A02.2 - Use Regulations

22. B. Uses permitted by special exception. The following uses, only, are  
23. permitted by special exception in R. C. 3 zones.

24. 16A. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS,  
25. ENGINEERS, ARTISTS, MUSICIANS, OR OTHER PROFESSIONAL PERSONS AS AN ACCESSORY  
26. USE, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME  
27. BUILDING AS THAT SERVING AS THE PROFESSIONAL PERSON'S BONA-FIDE PRIMARY RESI-  
28. DENCE; DOES NOT OCCUPY MORE THAN 25 PER CENT OF THE TOTAL FLOOR AREA OF THAT  
29. RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NON-RESIDENT  
30. PROFESSIONAL ASSOCIATE NOR TWO OTHER NON-RESIDENT EMPLOYEES.

31. Section 1A03 - R. C. 4 (WATERSHED PROTECTION) ZONES

32. 1A03.3 - Use Regulations

33. B. Uses permitted by special exception. The following uses, only, are  
34. permitted by special exception in R. C. 4 zones.

35. 7B. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS,  
36. ENGINEERS, ARTISTS, MUSCIANS, OR OTHER PROFESSIONAL PERSONS AS AN ACCESSORY  
37. USE, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME

1. BUILDING AS THAT SERVING AS THE PROFESSIONAL PERSON'S BONA-FIDE PRIMARY RESI-  
2. DENCE; DOES NOT OCCUPY MORE THAN 25 PER CENT OF THE TOTAL FLOOR AREA OF THAT  
3. RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NON-RESIDENT  
4. PROFESSIONAL ASSOCIATE NOR TWO OTHER NON-RESIDENT EMPLOYEES.

5. Section 1A04 - R. C. 5 (RURAL-RESIDENTIAL) ZONE

6. 1A04.2 - Use Regulations

7. B. Uses permitted by special exception. The following uses, only, are  
8. permitted by special exception in R. C. 5 zones.

9. 10A. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS,  
10. ENGINEERS, ARTISTS, MUSICIANS, OR OTHER PROFESSIONAL PERSONS AS AN ACCESSORY  
11. USE, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME  
12. BUILDING AS THAT SERVING AS THE PROFESSIONAL PERSON'S BONA-FIDE PRIMARY RESI-  
13. DENCE; DOES NOT OCCUPY MORE THAN 25 PER CENT OF THE TOTAL FLOOR AREA OF THAT  
14. RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NON-RESIDENT  
15. PROFESSIONAL ASSOCIATE NOR TWO OTHER NON-RESIDENT EMPLOYEES.

16. SECTION 3. AND BE IT FURTHER ENACTED, that Paragraph 14.e. of Subsection  
17. 1B01.1.A. of the Baltimore County Zoning Regulations, as amended, be and it is hereby  
18. repealed.

19. SECTION 2- 4. AND BE IT FURTHER ENACTED, that Paragraph 9B be and it is hereby  
20. added to Subsection 1B01.1.C. of the Baltimore County Zoning Regulations, as amended,  
21. to read as follows:

22. Section 1B01 - REGULATIONS WITH RESPECT TO D. R. ZONES IN GENERAL.

23. 1B01.1 - General Use Regulations in D. R. Zones.

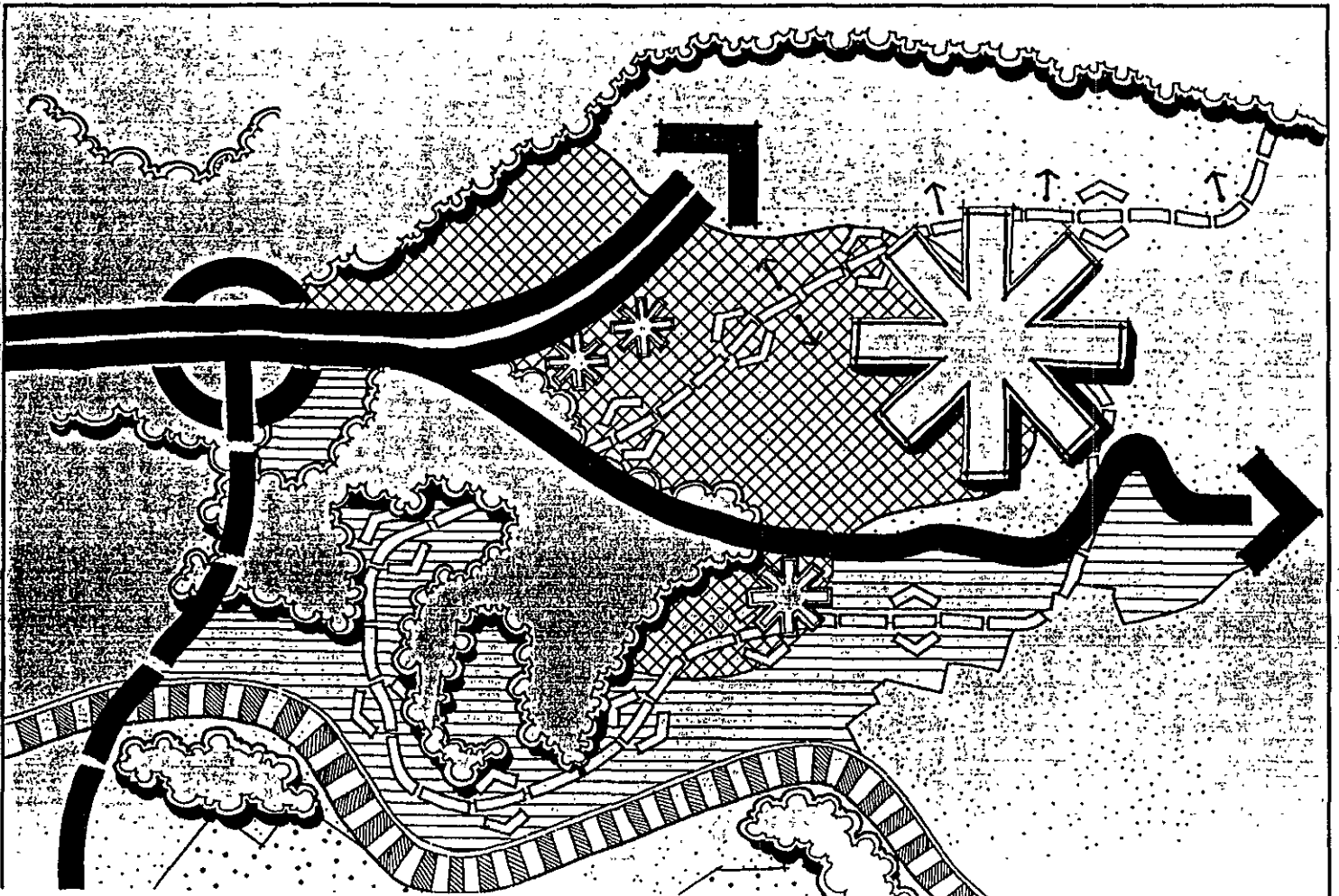
24. C. Uses permitted by special exception. The following uses, only, are  
25. permitted by special exception in all D. R. Zones, SUBJECT TO THE RESTRICTIONS  
26. HEREINAFTER PRESCRIBED.

27. 9B. ~~IN-D-R-10-5-and-D-R-16-ZONES-ONLY~~, OFFICES OR STUDIOS OF  
28. PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS, ENGINEERS, ARTISTS, MUSICIANS,  
29. OR OTHER PROFESSIONAL PERSONS, PROVIDED THAT ANY SUCH OFFICE OR STUDIO  
30. IS ESTABLISHED WITHIN THE SAME BUILDING AS THAT SERVING AS THE PROFESSIONAL  
31. PERSON'S BONA-FIDE PRIMARY RESIDENCE; DOES NOT OCCUPY MORE THAN 25 PER CENT  
32. OF THE TOTAL FLOOR AREA OF SUCH RESIDENCE; AND DOES NOT INVOLVE THE EMPLOY-  
33. MENT OF MORE THAN ONE NON-RESIDENT EMPLOYEE PROFESSIONAL ASSOCIATE NOR TWO  
34. OTHER NON-RESIDENT EMPLOYEES.

35. SECTION 3- 5. AND BE IT FURTHER ENACTED, that this Act shall take effect  
36. forty-five days after its enactment.

# Master Plan

Baltimore County 1989-2000



People's Counsel #9

People's Counsel #9

# ISSUE: Commercial Uses Along Major Highways

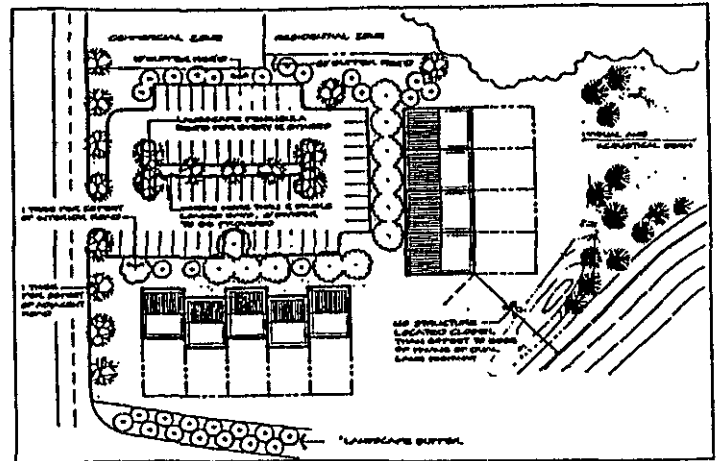
Balancing the competing demands for moving traffic and giving individual access to abutting land is a challenging issue affecting the major highways County-wide. In the Central Sector, the record of success with this challenge is mixed but encouraging. The County, typically with strong community support, has resisted the strong pressure for commercial zoning along Ferring Parkway; Dulaney Valley Road (outside of Central Townson); all of West Joppa Road, and Charles Street (except for the node at Stevenson Lane); most of Taylor Avenue, Falls Road and Loch Raven Boulevard; and even large parts of East Joppa Road.

The challenge remains mostly unmet, however, along the historical "main street" traversing the length of the Central Sector. The appearance of almost the entire length of York Road from the City boundary northward to Hunt Valley is unsatisfactory.

Actions to address this kind of challenge are needed for arterial roads throughout the County. The following proposals are aimed particularly at segments of York Road but should be applied in similar situations.

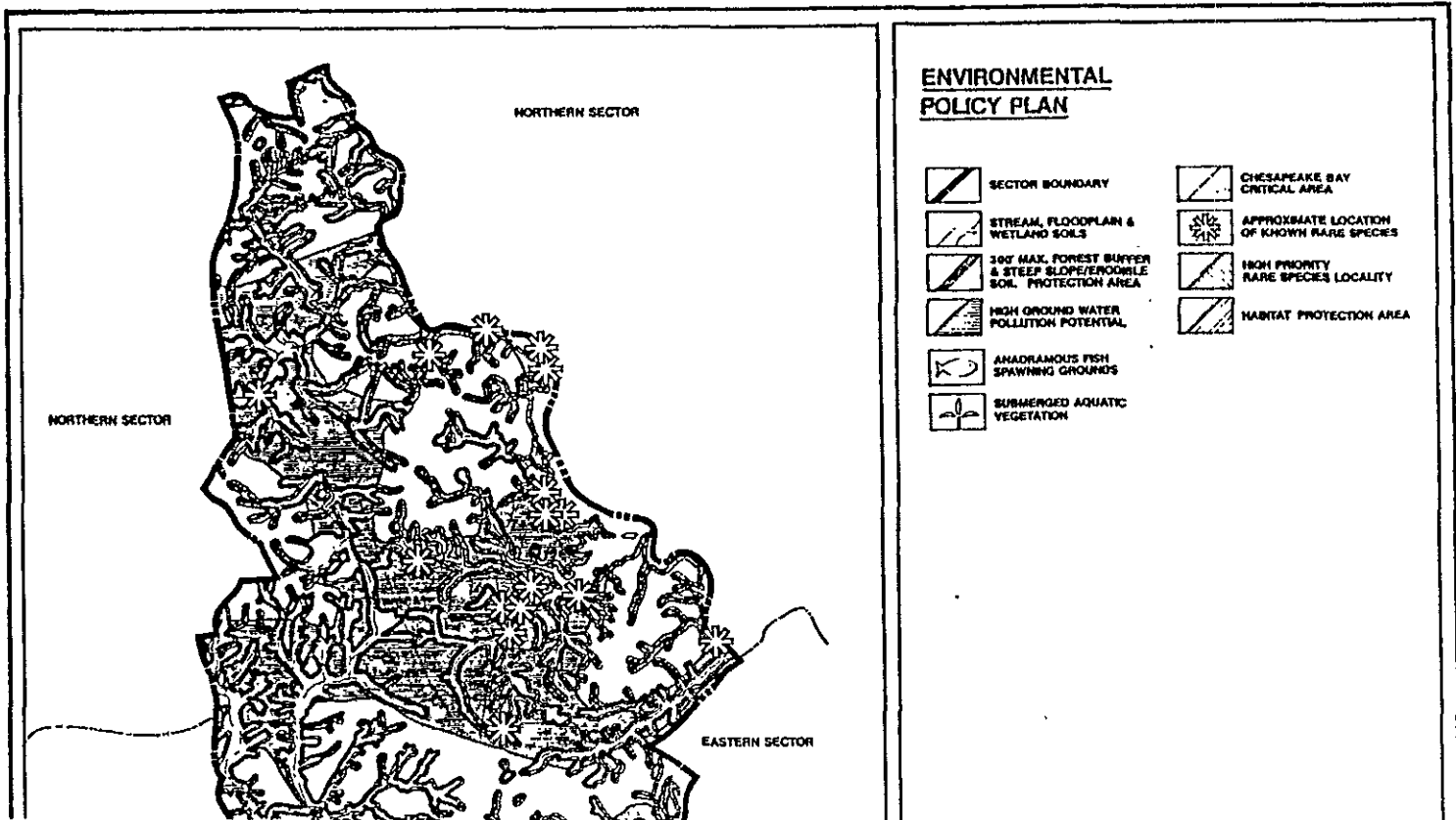
## ACTIONS:

1. Between the City line and Burke Avenue there is no justification for any additional commercial development along York Road (or intruding into the adjoining communities). Every opportunity should be taken to consolidate the points of vehicular entry/exit on York Road. Streetscaping and land-



scaping enhancements should continue. Opportunities for improving amenities for pedestrians should be sought.

2. The section from Seminary Avenue to Ridgely Road typifies an undesirable combination of elements: narrow and shallow lots, frequent curb cuts, shallow front yards, lack of opportunity for parallel circulation at the front or rear, lack of a separate left-turn lane, excessive and chaotic signage, absence of visual amenity, immovable high voltage power poles at the curbline, etc. Solving this complicated set of problems is



PROPOSED PLAN

SEE PAGE 105 of ADOPTED PLAN 2/5/90  
FOR SAME LANGUAGE ON YORK ROAD (ACTION 1)

AFFIDAVIT

STATE OF MARYLAND  
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a  
duly elected member of the (Board of Directors) (Zoning Committee)  
of the Rodgers Forge Community Association.

also members are: Donald Gerdig and Lizette Hevisler

ATTEST:

RFCd Association

Elizabeth Hevisler  
Secretary

H. Hol Jr  
President

DATE: April 21, 1995

a



NOTED Pet Ex. 2

KEEP!

DONOT LOAN OUT

see sect ~~X~~

ZONING REGULATIONS AND RESTRICTIONS

FOR

BALTIMORE COUNTY

2/2/45 - 7/2/53

Inc. Amendments

7/2/53 - 3/30/55

Pet. Ex. 4

MICROFILMED

32. Trailer: A vehicle used, or intended for use as a conveyance upon the public street or highways, so designed, constructed, reconstructed, or added to by means of portable accessories in such manner as will permit the occupancy thereof as a movable dwelling or sleeping place.

33. Trailer Camp: Any land upon which, habitually or infrequently, one or more trailer or house cars, when detached from its automobile, or means of locomotion, or a combined car and house trailer, are placed or located, and whether or not used for occupancy as dwelling or otherwise, and shall include any structure or building used as a service building for such camp or intended for use as a part of the equipment of such camp.

34. Wayside Stand: A temporary structure including tables, or other method for display and sale of farm products or commodities.

35. Yard: An open space on the same lot as the building and unoccupied and unobstructed from the ground up (except such accessory buildings, or projections as are expressly permitted in these regulations) and not including a court.

36. Yard, Front: A yard extending across the full width of the lot and measured between the front lot line and the foundation wall of the building.

37. Yard, Rear: A yard extending across the full width of the lot measured between the rear lot line and the main building.

38. Yard, Side: A yard extending from the front yard to the rear yard and measured from the side lot line to the building.

39. Zone: An area for which the regulations governing the use of buildings and land are identical.

## SECTION II—ZONES

For the purposes of these regulations, the County is hereby divided into Seven (7) Zones as follows:

- "A" Residence Zone - - - (Cottage) 2000 J.
- "B" Residence Zone - (Semi-detached)
- "C" Residence Zone - - (Apartment)
- "D" Residence Zone - - - (Group)
- "E" Commercial Zone.
- "F" Light Industrial Zone.
- "G" Heavy Industrial Zone.

*See Sect X  
to SKY  
NO red, etc.*

## SECTION III—"A" RESIDENCE ZONE

A. Use Regulations: In any "A" Residence Zone, except as hereinafter expressly provided, no building or land shall be used and no building or structure shall be hereafter erected, altered, repaired or used except for one or more of the following uses:

1. Church, parochial school, convent or monastery.
2. Dwelling, single family.
3. Dwelling, two-family.
4. Farming and buildings incidental thereto.
5. Home Occupations, provided that no sign or signs shall be displayed on the lot so used exceeding a total of two square feet in area, not projecting more than one foot beyond the building, and not illuminated.



6. Professional office when situated in the building used by practitioner as his or her private dwelling, provided that no name plate shall be displayed exceeding two square feet in area.
7. Public park or playground.
8. Public building.
9. Public water works or reservoir.
10. Trailer, one unoccupied, for storage only.
11. Tourist home.
12. Truck garden.
13. Accessory building and uses incident to any of the above uses when located on the same lot and in the rear yard and not involving the conduct of a retail business, and which may include:
- (a) Any accessory building when located not less than 60 feet from front lot line and in case of a corner lot where rear lot line abuts on side line of lot adjoining on rear, no accessory building shall be less than 25 feet from the side street line except when built as a part of the main building, provided, however, that any accessory building which is erected within 60 feet of any side street line shall not be less than 10 feet from the rear lot line. In case of a corner lot where rear line of lot abuts on rear line of lot adjoining on rear, no accessory building shall be less than 15 feet from the side street line and in no case shall an accessory building be located within two feet of any lot line.
- (b) Poultry house, provided use is of a private nature only and no poultry or eggs are sold, provided, however, that any poultry yard, run or enclosure, shall be, in its entirety, within the rear yard of such lot.
4. Telephone and telegraph lines, electric light and power lines on public highways or carrying less than 5,000 volts on poles, underground conduits, cables and gas, sewer and water mains and pipes, provided that no building or structure except such poles shall be erected, altered, repaired or used in connection therewith without the issuance of a special permit as provided in Section XIII—Sub-section I.
- B. Height Regulations: No building shall exceed a height of forty feet or three stories.
- C. Area Regulations: The minimum dimensions of yards, and the minimum lot area, except as provided in Section IX, shall be as follows:
1. Lot Area: Each dwelling hereafter erected shall be located on a lot having an area of not less than five thousand square feet and a width of not less than fifty feet at the front building line. No yard space or minimum area required for a building or use by these regulations shall be considered as any part of the yard space or minimum area for another building or use.
2. Front Yard: The building line shall set back from the front lot line to provide for a front yard not less than twenty-five feet in depth, provided that when the majority of residential buildings on one side of a street between two intersecting streets, have been lawfully built with different front yard depths than the aforesaid twenty-five feet, then no building hereafter erected or altered shall have a less front yard than the average depth of said actual front yards of buildings immediately to either side of said building; and, provided, further that no building shall be required by the regulations to set back more than fifty feet in any case, and provided further that these regulations shall not be construed as to reduce to less than 22 feet the buildable width of a corner lot.
- Side Yard: There shall be a side yard not less than seven feet in width along each side lot line, except in case of a corner lot the side yard along the side street shall not be less than fifteen feet.
- Rear Yard: There shall be a rear yard, having a minimum average depth of twenty feet but in no case less than fifteen feet in depth at any one point.

**DEFINITIONS**

**Family:** Any number of individuals lawfully living together as a single housekeeping unit and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel.

**Farmer's Roadside Stand:** An accessory structure for the sale of articles grown or produced on the premises.

**Farming:** Commercial agricultural uses in general, and specifically crop, dairy, stock, and poultry farming; commercial greenhouses on three acres or more.

**Floor Area Ratio (F.A.R.):** The ratio of the total aggregate of all floor area of a building (or buildings, if more than one principal building occurs on a site) to its net site area (exclusive of street rights-of-way). Total floor area shall include outside walls, floor areas of basements and of all accessory buildings, including garages and sheds; and covered areas, including open porches, breezeways and carports. Both the height of any building and its amount of coverage of the land by such building may be expressed with one figure. An F.A.R. of 1.0 can mean 100% coverage of the net land by a one-story building, 50% coverage by a two story building, 25% coverage by a four-story building, etc.

**Garage, Community:** A structure or series of structures for the storage of automobiles of residents of the neighborhood, and not used for making repairs.

**Garage, Residential:** An accessory building, portion of a main building, or building attached thereto, used for storage of private motor vehicles, only one of which may be a commercial vehicle.

**Garage, Service:** A garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired, or kept for remuneration, hire or sale.

**Home Occupation:** Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not

**BALTIMORE COUNTY**

**ZONING REGULATIONS**

Adopted

March 30, 1955

in accordance with Title 30, Section 532(c) of the Code of Public Local Laws of Baltimore County, (1955 Edition), with subsequent amendments through December, 1963.

First edition 1955  
Second edition 1964

Pet. Ex. 5

have any exterior evidence, other than a permitted sign, to indicate that the building is being utilized for any purpose other than that of a dwelling; and in connection with which no commodity is kept for sale on the premises, not more than one person is employed on the premises other than servants or members of the immediate family, and no mechanical equipment is used except such as may be used for domestic purposes.

**Hospital:** Any institution, including a sanitarium, which maintains and operates facilities for overnight care and treatment of two or more non-related persons as patients suffering mental or physical ailments, but not including any dispensary or first aid treatment facilities maintained by a commercial or industrial plant, educational institution, convent, or a convalescent home, as previously defined.

**Hospital, Class A:** A hospital which does not primarily treat communicable diseases, insane or feeble-minded patients, epileptics, drug addicts, or alcoholic patients, and is not a penal or correctional institution (see Section 407).

**Hospital, Class B:** A hospital which does primarily treat the types of cases noted in Class A above, and which may be a penal or correctional institution (see Section 407).

**Hotel:** A building designed as a temporary abiding place in which lodging is provided for compensation, with or without meals, containing 10 or more guest rooms and having an outside entrance in common.

**Junk Yard:** Any land used commercially or industrially for storage or for sale of scrap metal, waste paper, rags, or other junk, and including non-commercial storage of non-operating or non-drivable motor vehicles, dismantling or storage of such vehicles or parts thereof, or used machinery, and regardless of whether repair or any other type of commercial operation occurs, but excluding scrap for use in manufacturing processes on the premises, or waste mate-

Pet. Ex. 6

We, the undersigned, understand that there is an upcoming zoning hearing for case #95 95 SPH. This hearing held before the Baltimore County Board of Appeals concerns the property located at 7100 York Road.

Our signatures express our support for the Drs.' Jenkins continued use of this property for the practice of dentistry. We consider their practice to be an asset and a service to the community.

We do not consider their practice to be an intrusion into our residential community nor do we see any harm to the health, safety, or welfare of the community.

NAME	ADDRESS	ZIP CODE
Chris Covington	423 Dumbarton Rd	21212
Sarah Wetzel	218 Midhurst Rd	21212
THOMAS P. HINSON	7207 OXFORD B.	21212
John B. J. Batenon	6901 PETWORTH RD	21212
Gene Menz	327 Hopkins Rd.	21212
Lisa Cavignion	423 Dumbarton Rd	21212
Ausant Huerta	9749 Hammer Park Ct	Columbia, MD 21046
Karen O'Leary	413 Dumbarton RD	21212
Kate Jenkins	28 Hickory Meadow Rd	21030
S. Brady Jenkins	28 Hickory Meadow Rd	21030
George M. O'Leary	413 Dumbarton Road	21212
ANDY STRICK	7100 BRISTOL ROAD	21212

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NAME	ADDRESS	ZIP CODE
<u>Frank Maher</u>	<u>230 Stevenson</u>	<u>21212</u>
<u>Mary Ann Aydt</u>	<u>6904 1/2 Petworth Rd.</u>	<u>21212</u>
<u>Carolyn W. Lewis</u>	<u>928 Cromwell Blvd.</u>	<u>21286</u>
<u>Jeanne E. Arnette</u>	<u>501 Wilton Rd</u>	<u>21286</u>
<u>Robert Howard</u>	<u>11 HENRY AVE</u>	<u>21236</u>
<u>Anna Alexis</u>	<u>1010 E. Lake Ave.</u>	<u>21212</u>
<u>Kathy Kelly</u>	<u>312 Park Avenue</u>	<u>21206</u>
<u>O. Robert Avery</u>	<u>129 Hopkins Road</u>	<u>21212</u>
<u>Sally Chung</u>	<u>4532 Riostertown Rd</u>	<u>21215</u>
<u>Adrian Hughes, IV</u>	<u>945 Fairmount Ave.</u>	<u>21204</u>
<u>Deborah A. Hughes</u>	<u>945 Fairmount Ave.</u>	<u>21204</u>

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NAME

ADDRESS

ZIP CODE

Bernine E. Hirschauer	214 Murdock Rd Baltimore, Md	21212
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Victor J. Hirschauer	124 Dunkirk Rd Baltimore, MD	21212
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Stu Cole	405 CROYDON RD BALTO, MD	21212
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Wayne R. Webb	405 CROYDON RD BALTO MD	21212
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Leane Custer	3926 Mark Ave. Balto, md.	21206
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James W. Fray	1022 Rixhigh Rd Towson, MD	21286
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Theo. J. Carver	726 Regester Ave Baltimore, Md	21212
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May Ann Martin	909 Oakdene Rd Balto, md	21220
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Susan Erdler	4 Mulrany Ct. Timonium, MD	21093
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Cary Woodward	701 W. Melrose Ave Baltimore	21210
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Alicia M. Medler	2617 Canterbury Rd Baltimore, MD	21234
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NAME	ADDRESS	ZIP CODE
Elizabeth van Eul	205 Dumbarton Rd.	21212
Morothy H. Kirk	7106 Warden Rd.	21212
Ruth Schott	3920 Wilke Ave	21206
John C. Kirk	7106 Warden Rd	21212
Peggy Ollerhead	902 Fairway Dr.	21286
Dennis Kenney	10 Bully, Buxton	21093
Karl E. Gount	Finksburg, Md.	21048
Kathleen M. Horvay	Finksburg, Md	21048
Mary J. Frehberger	Lock Raven Blvd Apt 441	21239
Frank A. [Signature]	3701 Knoble	21218
Joanne P. [Signature]	143 Stevenson Lane	21210

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NAME	ADDRESS	ZIP CODE
<u>[Signature]</u>	<u>12605 Watersport Court</u>	<u>21117</u>
<u>Barlene Quinn</u>	<u>6508 Old Orchard Rd</u>	<u>21239</u>
<u>Cecelia Nasir</u>	<u>6227 Chingwood Way</u>	<u>21239</u>
<u>Margaret Hughes</u>	<u>305 E. Joppa Rd.</u>	<u>21286</u>
<u>Eric Hughes</u>	<u>305 E. Joppa Rd</u>	<u>21286</u>
<u>Matthew Frankoff</u>	<u>7008 York Rd.</u>	<u>21212</u>
<u>Catherine M. Cabral</u>	<u>19 Treeway Ct. Apt 3D</u>	<u>21286</u>
<u>Joan Komassor</u>	<u>1612 Northwilde Rd</u>	<u>21239</u>
<u>Mani Mente</u>	<u>256 Stamm Rd</u>	<u>21212</u>
<u>Megan Anderson</u>	<u>219 Ashland Rd</u>	<u>21030</u>
<u>John M. Fought</u>	<u>201 Edgevale Rd.</u>	<u>21210</u>



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NAME	ADDRESS	ZIP CODE
<u>Dot Cziganski</u>	<u>20004 Cameron Hill Rd.</u>	<u>21120</u>
<u>Susan Sarp</u>	<u>421 Chumleigh Rd</u>	<u>21212</u>
<u>Ann Marie Morin</u>	<u>503 Sussex</u>	<u>21286</u>
(224) <u>Jay B. Holt</u>	<u>1616 Creston Drive</u>	<u>21050</u>
<u>Joan Regier</u>	<u>2923 W Charles St</u>	<u>21218</u>
<u>Carol L. Russell</u>	<u>1026 Brezjewick Rd.</u>	<u>21286</u>
<u>Carolyn M. Craig</u>	<u>1306 Highland Dr.</u>	<u>21239</u>
<u>Maddeline Gaper</u>	<u>325 Noland Ave</u>	<u>21212</u>
<u>Debra Bracka</u>	<u>6236 Bellona Ave</u>	<u>21212</u>
<u>Shirley Smith</u>	<u>210 Rothwell Dr. Lutherville, Md.</u>	<u>21093</u>
<u>Kitty Decimel</u>	<u>845 Powers St. Balto Md</u>	<u>21211</u>

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NAME

ADDRESS

ZIP CODE

Bonny M. Lewis 6911 KENLEIGH RD. 21212

Kileen O'Sullivan 1004 W. Seminary 21093

Carolyn Outley 5202 Springlake Way 21212

Barbara Outley 635 E 35<sup>th</sup> ST. 21218

Margerie J. Oakley 507 Chattahoochee Rd 21093

Margaret Sylvest P.O. Box 10227 21234

Edna Butler 4103 Echodale Ave 21206

Edna J. Butler 4103 Echodale Ave 21206

John Sylvest 1290 CEDARCREST RD. 21239

Mary K. Sheen 523 ORKNEY Rd. 21212

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NAME	ADDRESS	ZIP CODE
<u>Sigrid R. Boyser</u>	<u>606 Regester Ave</u>	<u>Balts 21212-1915</u>
<u>M. J. Owens</u>	<u>710 W. Bellona</u>	<u>21212</u>
<u>Ernest F. Ohler</u>	<u>423 - Cheeverleigh Rd.</u>	
<u>George W. Fink</u>	<u>37 Acorn Circle</u>	
	<u>Apt 102</u>	<u>Balto 21286</u>
<u>Mary J. Hofmann</u>	<u>9 White Spruce Ct</u>	<u>Balts 21234</u>
<u>Albert Hofmann</u>	<u>1516 Chesaco Ave</u>	<u>BALTO, MD, 21237</u>
		<u>21286</u>
<u>Carolyn S. Rayne</u>	<u>7606 Knollwood Rd.</u>	
<u>George S. Rayne</u>	<u>7606 Knollwood Rd.</u>	
		<u>21207</u>
<u>Dorothy J. Schiefer</u>	<u>1420 Forest Park Ave</u>	
<u>Joseph S. Schiefer</u>	<u>1420 Forest Park Ave</u>	
<u>Nell Temple Purvis</u>	<u>5311 Springlake Way</u>	

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NAME

ADDRESS

ZIP CODE

Priscilla K. Lubow 19 Northampton Rd 21098

A. J. Munn 5 Middleton Ct 21212

Susan O'Sup 421 Chumleigh Rd 21212

Susan McIntyre 28 W. Allegheny Ave 21204

Shari Price 607 Edgewood 21229

Kathy Corbhi 1 Dunkirk Rd 21212

Louise Zypkin 633 Walker Ave 21212

Erin Luty 248 Cedarmere Cir 21117

Steve Kendall 7000 Copeleigh Rd. 21212

Elaine Kayser 606 Regester Ave 21212-1915

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NAME	ADDRESS	ZIP CODE
Anne S. MacConochie	921 Litchfield Rd.	21239
Alvin Lewis	5311 SPRINGLAKE WAY	21212
Beverly Wallace	701 Kingston Rd	21218
KENNETH E. AMES	3 TROTAN HORSE DRIVE	21131
JOHN BELL	1302 ROXBORO RD	21237
Walter Stitel	7100 Bristol Rd	21212
BEVERLY FRICK	37 Aiken Circle	21286
Kim Eisenhut	9 Nightingale Way	21093
Hen Xenakis	7325 Yorktowne Dr	21064
Georg Xenakis	7325 Yorktowne Drive	21204
Ronald W. Cawell	631 SUSSEX RD	21286

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NAME	ADDRESS	ZIP CODE
<u>Peggy Ollerhead</u>	<u>902 Fairway Dr.</u>	<u>21286</u>
<u>John W. Pelange</u>	<u>1128 Greenway Rd.</u>	<u>21030</u>
<u>Paul W. Sant</u>	<u>3723 Cyndale Ave</u>	<u>21213</u>
<u>Jill P. Rowe</u>	<u>6306 Mossway Balto</u>	<u>21212</u>
<u>Margaret Hughes</u>	<u>365E Joppa Rd.</u>	<u>21286</u>
<u>Marion S. Jackson</u>	<u>804 E. Seminary Ave.</u>	<u>21286</u>
<u>Kathryn Oakjore</u>	<u>413 Dumbarton</u>	<u>21212</u>
<u>Mary Curran</u>	<u>106 Dunkirk Rd.</u>	<u>21212</u>
<u>Andrew J. Curran</u>	<u>106 Dunkirk Rd.</u>	<u>21212</u>
<u>Lisa Weaver</u>	<u>417 Chenneth Rd</u>	<u>21212</u>
<u>Debbie Haacke</u>	<u>6 Sagney Court</u>	<u>21093</u>

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NAME	ADDRESS	ZIP CODE
Helen Harrison	1224 Union Springs Ln	21204
Stanley J. Inarski	13K Hopkins Rd	21204
Mark J. Alexis	1010 E. Lake Ave	21212
Ray Casagrande	27 Green Run Dr. St. Michaels, MD	21551
James C. Hull	935 Metfield Rd	21286
Loraine Lindholm	219 Rodgers Forge Rd	21212
Russella Thaven	1006 D Woodson Rd.	21212
Lindsay Dotaly	643 CONVENT RD	21286
Michelle O'Donnell	803 Juniper Rd	21286
Henry J. Miller	2814 LINGANORE AVE.	21234
Joan C. Krum	203 midhurst Rd	21212

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NAME	ADDRESS	ZIP CODE
Jeanie Herriell	1237 WINE SPRING LANE	21204
Jean Amos	8125 Clyde Bank Rd	21234
Jane Elizabeth Day	103 Springview CT	21093
John MacHale Jr.	1293 Crittgen Ave	21239
Hewley Peter	8131 CLYDE BANK RD	21234
Carol S. Monroe	1607 Ramblewood Rd	21239
Leah Carol Monroe	1607 Ramblewood Rd	21239
Mary E. Frame	610 Somerset Rd, #201	2010
Deborah Murphy	7608 Club Rd	21204
Jennifer Kapraun	25 Odeon Ct.	21234
Joseph H. Metzger	7108 YORK RD	21212



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NAME

ADDRESS

ZIP CODE

Robert W. Kramar 222 Dunkirk Rd 21212

Lee T. Martin 224 W. Turinnum Rd 21093

Wendy Brown 2507 Ebony Rd 21234

Robert Cerdumore 140 Dublin Dr 21093

Susan G. Shore 5811 Clearspring Rd 21212

Mary J. Kuttick 16683 Hoch Hill Rd 21239

David K. Smith 3926 Maratha 21206

Ruth E. Koeber 212 Stanmore Rd 21212

Rosalie Grant 318 Stevenson Ln 21204

Sta B Verde 3619 Keystone Ave 21211

Frances Hahn 405 Croydon 21212

We, the undersigned, understand that there is an upcoming zoning hearing for case #95 95 SPH. This hearing held before the Baltimore County Board of Appeals concerns the property located at 7100 York Road.

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NAME

ADDRESS

ZIP CODE

<u>John G. Bowling</u>	<u>720 Colorado Ave</u>	<u>Balto 21210, Md</u>
<u>Mrs. May Huppert</u>	<u>8060 Roslyn Ave.</u>	<u>Balto 21237 Md.</u>

<u>Leo F.C. Huppert</u>	<u>8060 Roslyn Ave.</u>	<u>Balto. Md. 21237</u>
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<u>Florence Curl</u>	<u>1610 Leslie Rd.</u>	<u>21222</u>
----------------------	------------------------	--------------

<u>Elmer E. Curl</u>	<u>1610 Leslie Rd.</u>	<u>21222</u>
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<u>Barbara Kayser</u>	<u>613 Regester Ave</u>	<u>21212</u>
-----------------------	-------------------------	--------------

<u>Thomas P. M. M.</u>	<u>7201 Oxford Rd</u>	<u>Beth. Md 21212</u>
------------------------	-----------------------	-----------------------

<u>James Marshall</u>	<u>15407 Tanyard Rd</u>	<u>Sparks, Md. 21152</u>
-----------------------	-------------------------	--------------------------

<u>Dr. W. Robert Spental</u>	<u>15407 Tanyard Rd.</u>	<u>Sparks Md 21152</u>
------------------------------	--------------------------	------------------------

<u>Karl F. F. F.</u>	<u>911 Hounsman Rd</u>	<u>Towson Md 21286</u>
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NAME	ADDRESS	ZIP CODE
Mary Beth Ingram	1022 Raker Rd	21286
Mary Pat Casella	14 Farm Ridge Ct	21013
Michael H. Casella	14 Farm Ridge Ct	21013
Deborah F Xenakes	2633 Moniston Rd	21111
Elizabeth Dering	419 Chumleigh Rd	21212
Patricia M. Haack	209 Brandon Rd	21212
Sharon Gwetter	6040 Yorkshire Dr	21212
Paul Ann	518 Annapolis Rd	21212
Stephen McWilliams	902 Oak Hill Rd	21239
V. Bruce Hishaw	124 Dunkirk Rd	21212
Don K. Baker	402 Kentmore Terrace	21009
Sybil C. Casella	1407 Farm Ridge Ct	21013

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NAME	ADDRESS	ZIP CODE
<u>Susan Bracken</u>	<u>1632 Jeffers Rd</u>	<u>21204</u>
<u>Karen Moore</u>	<u>6634 Coe Hill Rd.</u>	<u>21239</u>
<u>Susan Montague</u>	<u>111 Register Ave.</u>	<u>21212</u>
<u>J. Monty</u>	<u>111 REGISTER AVE</u>	<u>21212</u>
<u>Jeanne Okay</u>	<u>507 Chatterton Rd</u>	<u>21093</u>
<u>Kristen Fink</u>	<u>30 Tullycross Ct</u>	<u>21093</u>
<u>Olivia C. Mills</u>	<u>907 Aman Rd</u>	<u>21239</u>
<u>Carol S. Kotalak</u>	<u>643 Coe Valley Rd.</u>	<u>21286</u>
<u>Judith N. Blake</u>	<u>327 Dunbarton Rd</u>	<u>21212</u>
<u>Joan Berger</u>	<u>11 Wilkesfield Ct.</u>	<u>21093</u>
<u>Suei Conkling</u>	<u>908 Army Rd</u>	<u>21201</u>

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NAME	ADDRESS	ZIP CODE
<u>Keri <del>Foley</del> Feeley</u>	<u>1254 Ladawcroft Rd</u>	<u>21239</u>
<u>Margaret W. Chrismer</u>	<u>418 Hopkins Rd.</u>	<u>21212</u>
<u>James Fineran</u>	<u>6011 Pinehurst Rd.</u>	<u>21212</u>
<u>James R. Cochran</u>	<u>802 Seawood Road</u>	<u>21286</u>
<u>Steve Lutz</u>	<u>6411 Falkland</u>	<u>21239</u>
<u>[Signature]</u>	<u>2304 Chville Ave</u>	<u>21214</u>
<u>Charles Wood</u>	<u>701 W. Melrose Ave</u>	<u>21210</u>
<u>Marshall Woodman</u>	<u>701 W. MELROSE AVE</u>	<u>21210</u>
<u>Matthew Hackett</u>	<u>8527 Kings Ridge Rd</u>	<u>21234</u>
<u>Derek Tringler</u>	<u>1022 Buxleigh Rd</u>	<u>21286</u>
<u>Joe Smith</u>	<u>27 Rejester Ave</u>	<u>21212</u>
<u>Lina Cepaydi</u>	<u>8200 Tally Ho Rd</u>	<u>21093</u>

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NAME	ADDRESS	ZIP CODE
Robert Gauss	222 Dunkirk Rd.	21212
Ron Conner	423 Dumbarton Rd	21212
George Rayne	7606 Knollwood Rd	21286
Joseph P. Fonte	4611 OAKVIEW CT. <sup>ELLICOTT CITY, MD.</sup>	21042
Barbara B. Frick	1029 Overbrook Rd.	21239
Jon Wilson	5 Country Club Lane	21131
Nyrtle Greese	Presbyterian Home	21204
Ruth Greese	Presbyterian Home	21204
Clare E. Ozle	1723 Kennoway Rd. Balto., MD.	21234
Bill H. Anderson	" " " " " "	" " " " " "
Christine J. Murphy	410 Dumbarton Rd	21212
Robert E. Murphy	410 DUMBARTON RD	21212

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NAME	ADDRESS	ZIP CODE
John Diering	419 Chumleigh Rd.	21212
David Kern	2 Aigburth Rd #1	21286
Doctor Norman L. Haymire MANAGEMENT ANALYST	2317 HUNTER STREET BALTIMORE, MARYLAND	21218-5209
	216 E. 23rd St.	
Muhammad A-bdul-Aziz	Baltimore, MD.	21218
Dorothy Erdbrink	1314 Sunset Ave	21239
	6212 The Alameda	
Michael Harrell	Balto., Md.	21239
John [Signature]	6212 York Rd BMT. MD	21212
Marcia J. Bryon	8408 Kings Ridge Rd Baltimore	21234
Andre C. Hudson	3409 Oakmshaw Place Baltimore MD	21218
Lita T. Bombonrain	317 Hopkins Rd.	21212
Quinn [Signature]	4 Marlborough Ct.	21093
Carolyn S. Rayne	7606 Knollwood Rd.	21286

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NAME

ADDRESS

ZIP CODE

Margaret Sitoras 9003 Briar Rd. 21234

Phyllis A. May 4905 E. FEDERAL ST 21205

Nancy Meyer 4905 E. Federal St 21205

Arthur D. Casey Jr. 1402 Berwick Rd. 21204

Billy H. Hester 3906 Greenmont 21218

Marge Oakley 507 Chatterton Rd 21093

Allan K. Kubler 103 MARKET RD PIMMICO, MD 21093

Daniel B. Shickler, II 625 E 34<sup>th</sup> St. Balto Md 21218

Gregory J. Smith 1400 Front Ave 21093

William H. Hester 4 Hickory Hill Rd. 21030

Mary L. Chapman Baltimore, Md 21234



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NAME	ADDRESS	ZIP CODE
Jill Williams	1124 Greenway Rd	21030
Susan Sings	421 Chumleigh R	21212
Michael J. Hartke	643 Coventry Rd	21286
JoAnn Sine	4322 Penn Ave.	21236
John M. O	4108 CRENSON DR	21131
Dr. J. Hoff	831 W LOMBARD RD ST	21201
Coranne Stevenson	5105 Hillburn Ave	21206
Jean Miceli	4108 Crenson Dr. <sup>Phoenix MD</sup>	21131
Raymond	1 Pleasant View Pl <sup>Parkland, MD</sup>	21120
Eileen T. He	2814 Linganore Ave	21234
Anne J. Daugherty	10 Oakway Rd	21093
Cathy Stutch	7100 Bristol Rd	21212

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NAME	ADDRESS	ZIP CODE
Mary E. Hegarty	5921 Bellona Av	21212
William D. Jeffers	6413 Murray Hill Rd.	21212
Charles W. Wolf	508 Castle Dr.	21212
Marti Woods	25 Cavan Dr.	21093
Nancy B. Fox	7104 Rodgers Court	21212
Leary E. Smedley	625 Dunkirk Rd	21212
[Signature]	402 HOPKINS RD	21212
[Signature]	1 PHENSAUT VILLO PL	21120
Min Farkly	908 Army Rd.	21204
Jane Bremer	512 Morris Ave	21093
Linda O'Donnell	11959 Maple Chapel Rd	21093

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ZIP CODE

[illegible]

April 27, 1995

To the Baltimore County  
Board of Appeals.

Gentlemen -

For thirty-two years we have been going to this location for our dental work. No one to our knowledge has ever complained about a dentist being at the above said location.

It is easily accessible for people in the neighborhood, especially the elder, to come there for treatment.

We can see no reason why she should have to move.

MICROFILMED

Yours truly,  
Mr. & Mrs John C Diering

Mr & Mrs John C. Diering  
419 Chumleigh Rd.  
Baltimore, MD 21212



Pet. Ex. 7B

Mrs. Theodore M. Kremer  
424 Chumleigh Road  
Baltimore, Maryland 21212

January 16, 1995.

Dear Ms. Holston,

Copy

As a resident of Chumleigh Rd. in Rodgers Forge, I would like to express my support of whatever measures are appropriate to permit the dentist office of Drs. Mark and Adrienne Jenkins to continue their practice at their present location. They are good neighbors and I have never been bothered by their patients' parking or causing any disturbance in the neighborhood. I live two houses from the Dentist Office.

Drs. Mark and Adrienne Jenkins maintain their property in good condition and contribute to the quality of the neighborhood.

I hope that a variance can be granted by Baltimore County to permit them to continue their practice in Rodgers Forge without residing at the location of their office. I see no problem to our community by their staying.

Sincerely,  
Louise P. Kremer.

ENCLOSURE

Ret. Ex. 7C

April 26, 1993

To Whom it may concern:

The office of Mark and Adrienne Justins has been a blessing for me, as I am sure it is for all of their patients.

It is very helpful to know that there is an office in the neighborhood that is so convenient for all concerned.

I cannot imagine anyone objecting to their location. There is certainly no disturbance around the office at any time.

I sincerely hope the matter will be settled soon to their advantage. We need them!

I am unable to travel by myself and Mark and Adrienne have very willingly offered me transportation and services. These actions have meant so much to me - and many others I am sure.

These young professionals are important to the area, and deserve the opportunity to continue their practice at their present location. They are a credit to the neighborhood - not a detriment!

Very truly yours,  
(Mrs.) Rosalie Bryant  
318 Stevenson Dr

RECEIVED

*Pet. Ev 7D*

Richard W. Rochfort  
6031 Bellona Avenue  
Baltimore, Maryland 21212-2923  
410-435-3333 Fax 410-435-7311

Wednesday, April 26, 1995

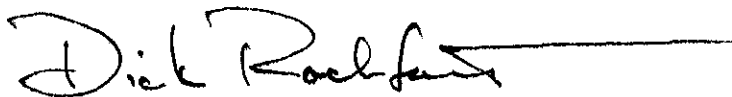
To Whom It May Concern:

I have lived in the Rogers Forge area for over 40 years. Most of this time was spent in my family's home directly across the street from Dr. Jenkins' office. During this time I have observed that the office is a stable, positive influence on the community. The Jenkins' and the Deardorffs before them have always acted in the best interest of the community. They have served the community in an exemplary way and, to my knowledge, have never caused a conflict of any kind.

I have observed patients coming and going from this office and have never had any cause for concern about parking or overcrowding. In fact, my mother who still lives in our family home across the street has benefited in the past from the convenience of Dr. Jenkins' office.

I believe that the loss of Dr. Jenkins' service will be a disservice to this community; furthermore, a stable tenant in the building is a positive influence and Dr. Jenkins is apparently perfectly capable of managing this.

Sincerely,

A handwritten signature in cursive script that reads "Dick Rochfort". The signature is written in dark ink and includes a long horizontal flourish extending to the right.

Dick Rochfort

NOT RECORDED

Duplicate  
of  
CBA'S  
P.E. # 4  
(~~0~~ sent to  
OCT)

11/11/11



KEEP!

DONOT LOAN OUT

see sect ~~X~~

ZONING REGULATIONS AND RESTRICTIONS  
FOR  
BALTIMORE COUNTY

2/2/45 - 7/2/53

Inc. Amendments

7/2/53 - 3/30/55

PETITIONER'S  
EXHIBIT No 2

RECEIVED

32. Trailer: A vehicle used, or intended for use as a conveyance upon the public street or highways, so designed, constructed, reconstructed, or added to by means of portable accessories in such manner as will permit the occupancy thereof as a movable dwelling or sleeping place.

33. Trailer Camp: Any land upon which, habitually or infrequently, one or more trailer or house cars, when detached from its automobile, or means of locomotion, or a combined car and house trailer, are placed or located, and whether or not used for occupancy as dwelling or otherwise, and shall include any structure or building used as a service building for such camp or intended for use as a part of the equipment of such camp.

34. Wayside Stand: A temporary structure including tables, or other method for display and sale of farm products or commodities.

35. Yard: An open space on the same lot as the building and unoccupied and unobstructed from the ground up (except such accessory buildings, or projections as are expressly permitted in these regulations) and not including a court.

36. Yard, Front: A yard extending across the full width of the lot and measured between the front lot line and the foundation wall of the building.

37. Yard, Rear: A yard extending across the full width of the lot measured between the rear lot line and the main building.

38. Yard, Side: A yard extending from the front yard to the rear yard and measured from the side lot line to the building.

39. Zone: An area for which the regulations governing the use of buildings and land are identical.

## SECTION II—ZONES

For the purposes of these regulations, the County is hereby divided into Seven (7) Zones as follows:

- "A" Residence Zone - - - (Cottage) 20' x 20' J.
- "B" Residence Zone - (Semi-detached)
- "C" Residence Zone - - (Apartment)
- "D" Residence Zone - - - (Group)
- "E" Commercial Zone.
- "F" Light Industrial Zone.
- "G" Heavy Industrial Zone.

*See Sect X  
to SKY  
NO MAP, etc.*

## SECTION III—"A" RESIDENCE ZONE

A. Use Regulations: In any "A" Residence Zone, except as hereinafter expressly provided, no building or land shall be used and no building or structure shall be hereafter erected, altered, repaired or used except for one or more of the following uses:

1. Church, parochial school, convent or monastery.
2. Dwelling, single family.
3. Dwelling, two-family.
4. Farming and buildings incidental thereto.
5. Home Occupations, provided that no sign or signs shall be displayed on the lot so used exceeding a total of two square feet in area, not projecting more than one foot beyond the building, and not illuminated.

6. Professional office when situated in the building used by practitioner as his or her private dwelling, provided that no name plate shall be displayed exceeding two square feet in area.

7. Public park or playground.
8. Public building.
9. Public water works or reservoir.
10. Trailer, one unoccupied, for storage only.
11. Tourist home.
12. Truck garden.
13. Accessory building and uses incident to any of the above uses when located on the same lot and in the rear yard and not involving the conduct of a retail business, and which may include:
  - (a) Any accessory building when located not less than 60 feet from front lot line and in case of a corner lot where rear lot line abuts on side line of lot adjoining on rear, no accessory building shall be less than 25 feet from the side street line except when built as a part of the main building, provided, however, that any accessory building which is erected within 60 feet of any side street line shall not be less than 10 feet from the rear lot line. In case of a corner lot where rear line of lot abuts on rear line of lot adjoining on rear, no accessory building shall be less than 15 feet from the side street line and in no case shall an accessory building be located within two feet of any lot line.
  - (b) Poultry house, provided use is of a private nature only and no poultry or eggs are sold, provided, however, that any poultry yard, run or enclosure, shall be, in its entirety, within the rear yard of such lot.

4. Telephone and telegraph lines, electric light and power lines on public highways or carrying less than 5,000 volts on poles, underground conduits, cables and gas, sewer and water mains and pipes, provided that no building or structure except such poles shall be erected, altered, repaired or used in connection therewith without the issuance of a special permit as provided in Section XIII—Sub-section I.

B. Height Regulations: No building shall exceed a height of forty feet or three stories.

C. Area Regulations: The minimum dimensions of yards, and the minimum lot area, except as provided in Section IX, shall be as follows:

1. Lot Area: Each dwelling hereafter erected shall be located on a lot having an area of not less than five thousand square feet and a width of not less than fifty feet at the front building line. No yard space or minimum area required for a building or use by these regulations shall be considered as any part of the yard space or minimum area for another building or use.

2. Front Yard: The building line shall set back from the front lot line to provide for a front yard not less than twenty-five feet in depth, provided that when the majority of residential buildings on one side of a street between two intersecting streets, have been lawfully built with different front yard depths than the aforesaid twenty-five feet, then no building hereafter erected or altered shall have a less front yard than the average depth of said actual front yards of buildings immediately to either side of said building; and, provided, further that no building shall be required by the regulations to set back more than fifty feet in any case, and provided further that these regulations shall not be construed as to reduce to less than 22 feet the buildable width of a corner lot.

Side Yard: There shall be a side yard not less than seven feet in width along each side lot line, except in case of a corner lot the side yard along the side street shall not be less than fifteen feet.

Rear Yard: There shall be a rear yard, having a minimum average depth of twenty feet but in no case less than fifteen feet in depth at any one point.

## DEFINITIONS

**Family:** Any number of individuals lawfully living together as a single housekeeping unit and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel.

**Farmer's Roadside Stand:** An accessory structure for the sale of articles grown or produced on the premises.

**Farming:** Commercial agricultural uses in general, and specifically crop, dairy, stock, and poultry farming; commercial greenhouses on three acres or more.

**Floor Area Ratio (F.A.R.):** The ratio of the total aggregate of all floor area of a building for buildings, if more than one principal building occurs on a site) to its net site area (exclusive of street rights-of-way). Total floor area shall include outside walls, floor areas of basements and of all accessory buildings, including garages and sheds; and covered areas, including open porches, breezeways and carports. Both the height of any building and its amount of coverage of the land by such building may be expressed with one figure. An F.A.R. of 1.0 can mean 100% coverage of the net land by a one-story building, 50% coverage by a two story building, 25% coverage by a four-story building, etc.

**Garage, Community:** A structure or series of structures for the storage of automobiles of residents of the neighborhood, and not used for making repairs.

**Garage, Residential:** An accessory building, portion of a main building, or building attached thereto, used for storage of private motor vehicles, only one of which may be a commercial vehicle.

**Garage, Service:** A garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired, or kept for remuneration, hire or sale.

**Home Occupation:** Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not

## BALTIMORE COUNTY

### ZONING REGULATIONS

Adopted

March 30, 1955

in accordance with Title 30, Section 532(c) of the Code of Public Local Laws of Baltimore County, (1955 Edition), with subsequent amendments through December, 1963.

First edition 1955  
Second edition 1964

PETTYCOTTS  
EXHIBIT No 3

## DEFINITIONS

have any exterior evidence, other than a permitted sign, to indicate that the building is being utilized for any purpose other than that of a dwelling; and in connection with which no commodity is kept for sale on the premises, not more than one person is employed on the premises other than servants or members of the immediate family, and no mechanical equipment is used except such as may be used for domestic purposes.

**Hospital:** Any institution, including a sanitarium, which maintains and operates facilities for overnight care and treatment of two or more non-related persons as patients suffering mental or physical ailments, but not including any dispensary or first aid treatment facilities maintained by a commercial or industrial plant, educational institution, convent, or a convalescent home, as previously defined.

**Hospital, Class A:** A hospital which does not primarily treat communicable diseases, insane or feeble-minded patients, epileptics, drug addicts, or alcoholic patients, and is not a penal or correctional institution (see Section 407).

**Hospital, Class B:** A hospital which does primarily treat the types of cases noted in Class A above, and which may be a penal or correctional institution (see Section 407).

**Hotel:** A building designed as a temporary abiding place in which lodging is provided for compensation, with or without meals, containing 10 or more guest rooms and having an outside entrance in common.

**Junk Yard:** Any land used commercially or industrially for storage or for sale of scrap metal, waste paper, rags, or other junk, and including non-commercial storage of non-operating or non-drivable motor vehicles, dismantling or storage of such vehicles or parts thereof, or used machinery, and regardless of whether repair or any other type of commercial operation occurs, but excluding scrap for use in manufacturing processes on the premises, or waste material.

DEED — FEE SIMPLE — INDIVIDUAL GRANTOR — LONG FORM

CTC 8909

This Deed, MADE THIS

day of

in the year one thousand nine hundred and seventy-six

by and between

PHILIP CALVIN DEARDORFF

of Baltimore County, State of Maryland,

of the first part, and

MARK P. JENKINS and ADRIENNE JENKINS, his wife, of County and State aforesaid,

of the second part.

WITNESSETH, That in consideration of the sum of five dollars and other good and valuable considerations, the receipt of which is hereby acknowledged

713.00  
200.00  
425.00  
400.00

the said party of the first part

do es grant and convey to the said parties of the second part, as tenants by the entireties, their assigns and the survivor of them and the survivor's

personal representatives ~~XXXXXX~~ and assigns

in fee simple, all

that lot of ground situate in Baltimore County

and described as follows, that is to say:

BEGINNING for the same at the intersection formed by the west side of York Road and the north side of Chumleigh Road, coordinates of said intersection being north 30459.09 and east 2195.12 as shown on the plat entitled: "Section 12, Rodgers Forge" dated July 1953 and recorded among the Plat Records of Baltimore County in Liber G.L.B. No. 19 - folio 56; running thence and binding on the said west side of York Road north 11 degrees 52 minutes east 45.00 feet, thence leaving the said west side of York Road the following two courses and distances; viz: north 78 degrees 08 minutes west 150.00 feet and south 11 degrees 52 minutes west 70.00 feet to the aforementioned north side of Chumleigh Road; running thence and binding on the said north side of Chumleigh Road the following two courses and distances; viz: first south 78 degrees 08 minutes east 125.00 feet and second along a curve to the left having a radius of 25.00 feet for a arc distance of 39.27 feet said curve being subtended by a chord bearing north 56 degrees 52 minutes east 35.36 feet, to the place of beginning. The improvements thereon being known as No. 7100 York Road.

Being subject, however, to a 10 foot right-of-way along the third or south 11 degrees 52 minutes west 70.00 foot line for the installation and maintenance of utilities.

Being designated as Lot 10 Block 3 as shown on the aforementioned plat of Rodgers Forge.

BEING the same lot of ground described in a Deed of Assignment dated July 31, 1959 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3571, folio 25, which was granted and conveyed by Judith P. Ritchey unto Philip Calvin Deardorff.

BEING ALSO the same lot of ground described in a Deed of Reversion dated March 5, 1962 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3996, folio 97, which was granted and conveyed by Leo S. Thomson and Elizabeth S. Thomson, his wife, unto Philip Calvin Deardorff.

FILED

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said parties of the second part, as tenants by the entireties, their assigns and the survivor of them and the survivor's

personal representatives/successors  
and assigns, in fee simple.

AND the said party of the first part hereby covenants that he has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that he will warrant specially the property hereby granted; and that he will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of said grantor

Test:

Annie Laurie Poland  
ANNIE LAURIE POLAND

Philip Calvin Deardorff (SEAL)  
PHILIP CALVIN DEARDORFF

\_\_\_\_ (SEAL)

STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY, That on this 1st day of June, in the year one thousand nine hundred and seventy-six, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Philip Calvin Deardorff

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires:

July 1, 1978



Annie Laurie Poland  
ANNIE LAURIE POLAND, Notary Public

Rec'd for record JUN 3 1976 at 9:14  
Per Elmer H. Kahlene, Jr., Clerk  
Mail to Central Title Co. Inc.  
Receipt No. 100

PETITIONER'S  
EXHIBIT No 6

To Whom It May Concern;

I understand that there is an upcoming zoning hearing involving the dental practice of Drs. Mark and Adrienne Jenkins. The practice is located at 7100 York Rd. case #9595SPH. By my signature undersigned, I express my support for the Jenkins' practice. I consider it to be an asset to the community, and in no way adversely impacts on the community.

Elizabeth Diering

John B. Diering

C. McDonald

Judith A. Anderson  
887-4307

Queen Offerson  
321-0935

Myrtle Grese  
Leslie Moorey  
Ruth Grese

Edmund C. Piercy

Hawley Peter 583-0664

Ernest C. Schamehorn

Jeffrey O. Carlson 377-4815

Thomas P. Jensen 821-8597

Mary Ann Bradburn

Elizabeth P. Mc Shea

Thank You,

Stephen LAIKEN

TEL 239 3875

Caitlin Ames

Kelley Thompson

TEL: 377-6657

Raeon Thal

M. Adela Considine  
321-8381

322-5 STEVENSON LA-APP A-1- 21204

Lewar Lowood 529-3850

Joseph Trill 665-3381

Jama Menas 823-0340

Ed Butler

Anthony Sitaras

Orma Butler



To Whom It May Concern;

I understand that there is an upcoming zoning hearing involving the dental practice of Drs. Mark and Adrienne Jenkins. The practice is located at 7100 York Rd. case #9595SPH. By my signature undersigned, I express my support for the Jenkins' practice. I consider it to be an asset to the community, and in no way adversely impacts on the community.

Thank You,

Jennifer Greenfield  
Gary Chenoweth  
Dennis E. Glan  
Chris Schone  
John Perodito  
Priscilla Lubman  
Jay Donald Lathan  
Susan McIntyre  
Gloria M. Troyer  
3080 Le Trine

Kathy Gally  
Katherine A. Weimer

Frank Dearden  
Joe Polyzio Daye  
Joanne Oakey  
Jimmy Jolly  
Billy Duffey  
Tom in Lewis  
Mary Obrecht  
John C. Grayson  
Kelley Roche  
David Gusten

To Whom It May Concern;

I understand that there is an upcoming zoning hearing involving the dental practice of Drs. Mark and Adrienne Jenkins. The practice is located at 7100 York Rd. case #9595SPH. By my signature undersigned, I express my support for the Jenkins' practice. I consider it to be an asset to the community, and in no way adversely impacts on the community.

Thank You,

William C. Dwyer Jr.

Harvey H. Donnell

Debbie Haacke

Conn. Keenan

Ther H

Carolyn Antleby

Judith A. Jones

E. N. Caspe

Alice G. Malinowski

Elizabeth A. Gintling

Beverly Redington

Margaret Sitaras

Louise R. Lintchman

Heather L. Huey

G. W. Ambrose

Margaret Hufes

Patricia Frai

Agnes

Marjorie J. Oakes

William M. Beal

Dorothy M. Collison

Lea Schindler

Frank B.

To Whom It May Concern;

I understand that there is an upcoming zoning hearing involving the dental practice of Drs. Mark and Adrienne Jenkins. The practice is located at 7100 York Rd. case #9595SPH. By my signature undersigned, I express my support for the Jenkins' practice. I consider it to be an asset to the community, and in no way adversely impacts on the community.

Thank You,

Elise Drewes

Eric Hughes

B. Rausch

J. S. Hinson

Wp. Riessing

Carolyn S. Rayne

George E. Rayne

Ether Linder

Carole Kennedy

Peg S. Shuck

Thomas J. Cosgrove

Susan Hamilton

Barbara L. Artz

Mary Grace K. Dudley

Deborah A. Xenakis

Craig T. Meyer

Marion S. Jackson

Frank Mc Nerney

and Wint

Traci Custer

Breon G. Hester

Monica A. New

Jenine Kaplan

MAP	GRID	PARCEL
70	19	418

COPYRIGHT - MAP DIVISION - 1967  
MD. DEPT. OF ASSESS. & TAX

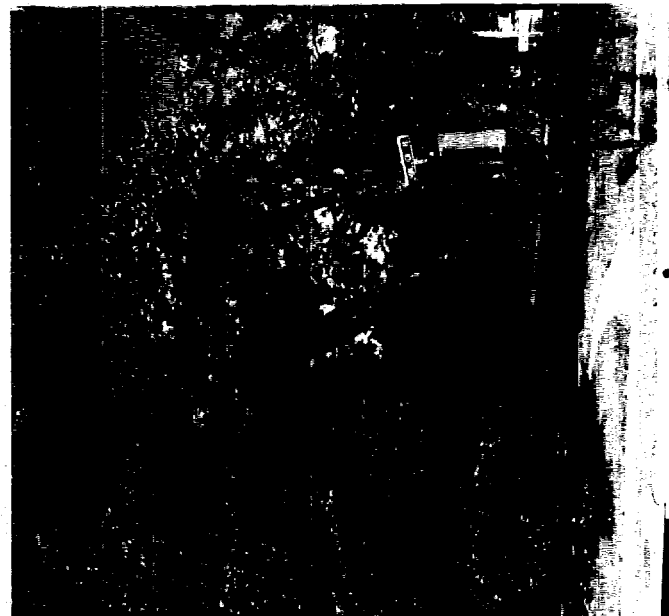
PETITIONER'S EXHIBITS 3A THRU 3J



3A



3B



3C



3E



3D



3F



3I

3G



3J

3H

IN THE MATTER OF  
APPLICATION OF MARK JENKINS,  
ET UX. FOR SPECIAL HEARING  
ON PROPERTY LOCATED ON WEST  
SIDE OF YORK ROAD AND  
CHUMLEIGH AVENUE  
(7100 York Road) CBA Case  
Number 95-95-SPH

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No.: 3-C-955091

\* \* \* \* \*

**ORDER**

It is hereby ORDERED this 9th day of September, 1996, that  
Mark and Adrienne Jenkins' Motion to Vacate Judgment entered by the  
Court on July 31, 1996 be and is hereby granted; and it is

FURTHER ORDERED that the Court's judgment entered in the  
above-captioned case on July 31, 1996 is hereby vacated; and it is

FURTHER ORDERED that the Court's judgment of the above-  
captioned case be reissued as of the date of execution of the date  
of entry of this Order.

Barbara Kerr Howe  
BARBARA KERR HOWE  
Baltimore County Administrative Judge

True Copy Test  
SUZANNE MENSCH, Clerk

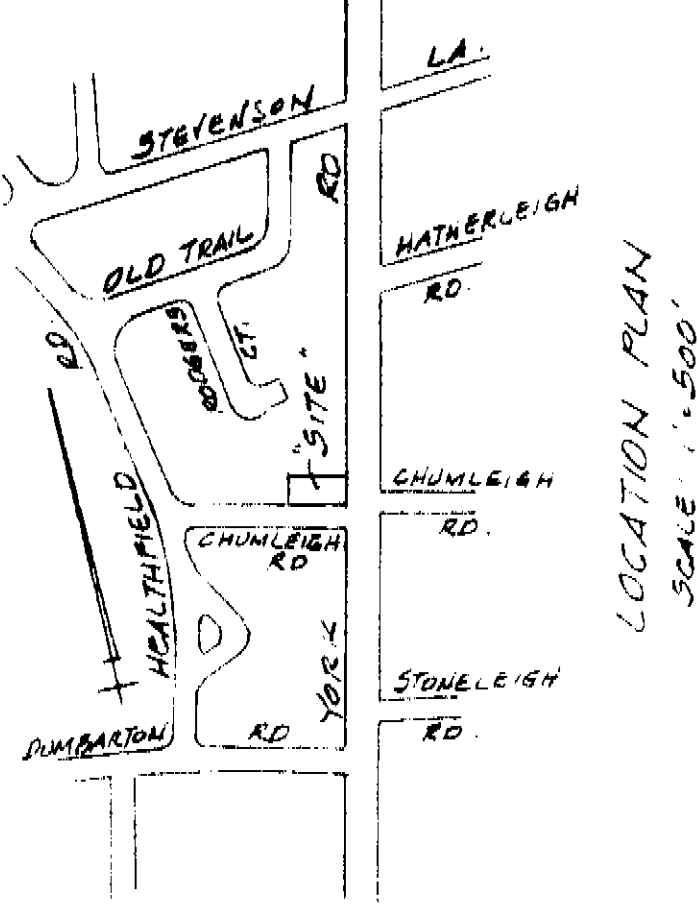
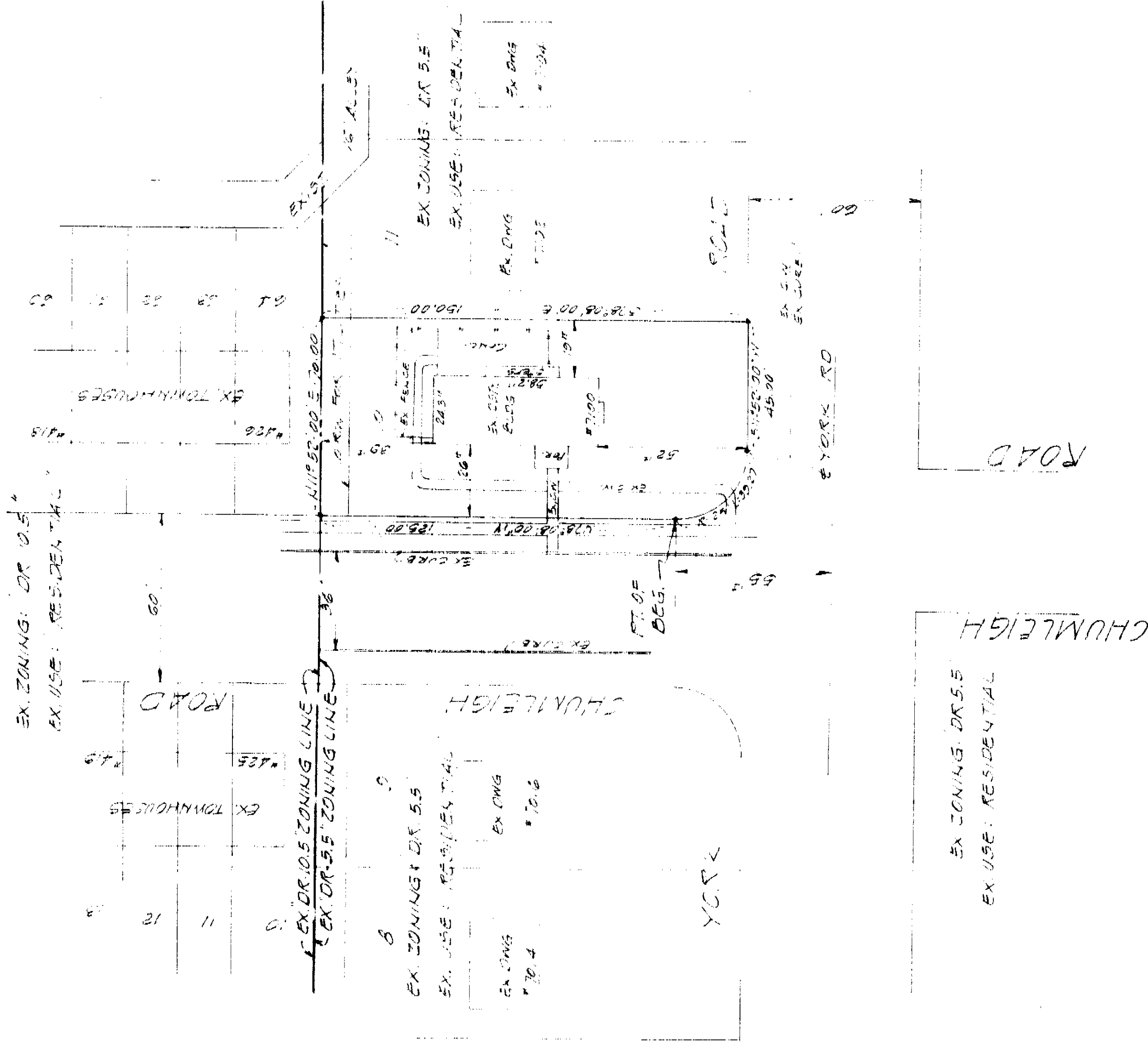
Per [Signature]  
Assistant Clerk

MICROFILMED

FILED SEP 12 '96



SECTION No 12  
"RODGERS FORGE"  
GLB 19.56



### GENERAL NOTES

1. AREA OF PROPERTY: 0.2125 AC (18,600 SQ FT)
2. EXISTING ZONING OF PROPERTY: DR 5.5
3. EXISTING USE OF PROPERTY: RESIDENCE (DENTIST OFFICE)
4. PROPOSED ZONING OF PROPERTY: DR 5.5
5. PROPOSED USE OF PROPERTY: RESIDENCE (DENTIST OFFICE)
6. PETITIONER REQUESTING A SPECIAL HEARING TO DETERMINE THE NON-CONFORMING STATUS FOR A DENTIST OFFICE IN A RESIDENCE
7. EXISTING 2.5% DOWNSLOPE
8. EXISTING 2.5% DOWNSLOPE
9. EXISTING 2.5% DOWNSLOPE
10. EXISTING 2.5% DOWNSLOPE
11. EXISTING 2.5% DOWNSLOPE
12. EXISTING 2.5% DOWNSLOPE
13. EXISTING 2.5% DOWNSLOPE
14. EXISTING 2.5% DOWNSLOPE
15. EXISTING 2.5% DOWNSLOPE
16. EXISTING 2.5% DOWNSLOPE
17. EXISTING 2.5% DOWNSLOPE
18. EXISTING 2.5% DOWNSLOPE
19. EXISTING 2.5% DOWNSLOPE
20. EXISTING 2.5% DOWNSLOPE

# 95-95-SPH

PLAT TO ACCOMPANY PETITION  
FOR

SPECIAL HEARING

# 7100 YORK ROAD

ELECT. DIST. 904 BALTIMORE CMD

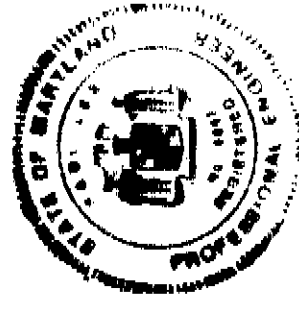
SCALE: 1" = 30'

JULY 23, 1994

MICROFILMED

# 96

PAUL LEE ENGINEERING, INC.  
304 W. PENNSYLVANIA AVE.  
TOWSON, MARYLAND 21204







PREPARED BY AIR PHOTOGRAPHICS, INC.  
MANTINBORO, N.Y. 2501

BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
PHOTOGRAPHIC MAP

SCALE	LOCATION	SHEET
1" = 200' ±	STONELEIGH ANNESLIE ROGERS FORGE	MICROFILMED N.E. 8-A
DATE OF PHOTOGRAPHY JANUARY 1986		

PC  
8-A



03-C-95-005091 Date: 08/11/97 Time: 09:55 Page: 2

CIRCUIT COURT FOR BALTIMORE COUNTY  
Suzanne Mensch  
Clerk of the Circuit Court  
County Courts Building  
401 Bosley Avenue  
P.O. Box 6754  
Towson, MD 21285-6754  
(410)-887-2601, TTY for Deaf: (800)-735-2258

08/11/97 Case Number: 03-C-95-005091 AA  
Date Filed: 06/19/95  
Status: Closed/Active  
Judge Assigned: To Be Assigned,  
Peoples Counsel For Baltimore County, et al vs County Board Of Appeals

CASE HISTORY

INVOLVED PARTIES

Type Num	Name>Last,First,Mid,Title)	Dispo	Entered
PLT	001 Peoples Counsel For Baltimore County Attorney: 0005744 Demilio, Carole Room 47, Courthouse 400 Washington Avenue Towson, MD 21204 (410)887-2188	CT DO 09/12/96 06/19/96	
	0029075 Zimmerman, Peter M 606 Baltimore Ave Suite 204 Towson, MD 21204 (410)296-2424		
PLT	002 Rodgers Forge Community Assn Inc Attorney: 0005744 Demilio, Carole Room 47, Courthouse 400 Washington Avenue Towson, MD 21204 (410)887-2188	CT DO 09/12/96 06/19/96	
	0029075 Zimmerman, Peter M 606 Baltimore Ave Suite 204 Towson, MD 21204 (410)296-2424		
PLT	002 Holston, Honey Capacity: Individually	CT DO 09/12/96 06/19/96	

03-C-95-005091 Date: 08/11/97 Time: 09:55 Page: 2

Attorney: 0005744 Demilio, Carole  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410)887-2188

0029075 Zimmerman, Peter M  
606 Baltimore Ave  
Suite 204  
Towson, MD 21204  
(410)296-2424

Type Num Name>Last,First,Mid,Title) Dispo Entered

PLT 004 Berding, Donald  
Capacity: Individually  
Attorney: 0005744 Demilio, Carole  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410)887-2188

CT DO 09/12/96 06/19/96

ITP 001 Jenkins, Mark P  
Attorney: 0005660 Bergerding, Francis X  
409 Washington Ave  
Ste 600  
Towson, MD 21204  
(410)296-6820

CT DO 09/12/96 06/19/96

ITP 002 Jenkins, Adrienne  
DEF 001 County Board of Appeals Of Baltimore County  
400 Washington Ave  
Rm 49  
Towson, MD 21204

10/04/96  
CT DO 09/12/96 06/19/96

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L	Day	Of	Rsult	By	Jdg	T	Notice	Rec
02/20/96	09:30A	003	yes	CIVIL	TBA		01	/01	CON	C	07/31/96	P	12/14/96	

03-C-95-005091 Date: 08/11/97 Time: 09:55 Page: 3

JUDGE HISTORY

JUDGE ASSIGNED Type Assign Date Removal RSN

TBA To Be Assigned. J 06/19/96

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
001000	Petition for Judicial Review Jg #1 Petition of Peoples Counsel for Balto. Co., Rodgers Forge Comm. Assn. Inc., Honey Holston, and Donald Berding for Judicial Review of the decision of the Co. Board of Appeals of Balto. Co. in the case of in the matter of Mark P. Jenkins, ET AL., for special hearing on property located on the West side York road and Chumbleigh Avenue (7100 York Road)98a Election District, 4th Councilmanic District, Balto. Co. Board of Appeals # 95-95-SPH, fd. Copy sent to app. y.	06/19/96	06/19/96	TBA	PLT001		07/31/96	JNB PS
001001	Answer Jc 3 (rec'd 7/5/96)	06/02/96	06/02/96	TBA	ITP001		07/31/96	GC PS
002000	Certificate of Notice Jc 2 (rec'd 6/26/96)	07/12/96	07/12/96	TBA	000		07/12/96	GC GC
003000	Amended Certificate of notice Jc 4 (rec'd 7/26/96)	08/02/96	08/02/96	TBA	000		07/31/96	GC PS
004000	Transcript of Record from Adm Agency #5	05/16/96	08/16/96	TBA	000		07/31/96	LG PS
005000	Notice - Rept of Record of Proceedings	08/16/96	08/16/96	TBA	PLT004	08/16/96	08/16/96	LG LG
006000	Notice - Rept of Record of Proceedings	08/16/96	08/16/96	TBA	ITP001	08/16/96	08/16/96	LG LG
007000	Notice - Rept of Record of Proceedings	08/16/96	08/16/96	TBA	PLT001	08/16/96	08/16/96	LG LG
008000	Notice - Rept of Record of Proceedings	08/16/96	08/16/96	TBA	PLT002	08/16/96	08/16/96	LG LG
009000	Notice - Rept of Record of Proceedings	08/16/96	08/16/96	TBA	PLT003	08/16/96	08/16/96	LG LG
010000	Notice - Rept of Record of Proceedings	08/16/96	08/16/96	TBA	PLT004	08/16/96	08/16/96	LG LG
011000	Memorandum #6 (rec'd 9/15/96)	09/19/96	09/19/96	TBA	PLT001		09/19/96	ES ES
012000	Memorandum of Appellant #7 and Ms. Honey Holston and J. Donald Berding, fd. (rec'd 9/15/96)	09/19/96	09/19/96	TBA	PLT002		07/31/96	ES PS

03-C-95-005091 Date: 08/11/97 Time: 09:55 Page: 4

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
013000	Memorandum and Adrienne Jenkins, fd.	10/17/96	10/16/96	TBA	ITP001		10/17/96	ES ES
014000	Reply Brief	12/07/96	12/06/96	TBA	PLT001		12/07/96	OFF OFF
015000	Hearing Notice	12/14/96	12/14/96	TBA	000	12/14/96	12/14/96	JD JD
016000	Open Court Proceeding February 20, 1996 - Hon. Barbara Kerr Howe. Hearing had. Dispo held Sub-Curia. Opinion and Order to be filed.	02/20/96		BKH	000		07/31/96	HK PS
017000	* Statement and Order of Court REVERSING the decision of the Baltimore County Board of Appeals, etc. fd.	07/31/96	07/31/96	BKH	000	Granted	07/31/96	PS PS
018000	* Order of Court GRANTING Appellant's Motion, fd.	07/31/96	07/31/96	BKH	000	Granted	07/31/96	PS PS
019000	8/13/96 sent docket entries to Dept. of Labor by hand	08/13/96		TBA	000		09/12/96	LC PH
020000	Motion to Vacate Judgment filed by Mark and Adrienne Jenkins	09/12/96	09/05/96	BKH	000	Granted	09/12/96	PH PH
021000	Notice of Appeal to COSA or COA * (Mark P. and Adrienne Jenkins), (8/16/1).	10/04/96	10/04/96	TBA	ITP001			OFF OFF
022000	Order to proceed w/out prehearing conf. * (8/16/1).	12/05/96	12/03/96	TBA	000			OFF OFF
023000	Original Record sent to COSA OF MARYLAND BY CERTIFIED MAIL ON JANUARY 24, 1997 WITH EXHIBITS FROM BOX 324.	01/24/97		TBA	000			AJ AJ
024000	Mandate from the COSA affirming judgment 08/07/97			TBA	000			PH PH

TICKLE

Code	Tickle Name	Status Expires	#Days AutoExpire	GoAhead	From Type
SLM	Set List For Motions CANCEL	09/27/96	22	no	MSNA D
EXP	Exhibit Pickup Notice OPEN	11/11/96	30	no	

03-C-95-005091 Date: 08/11/97 Time: 09:55 Page: 5

EXHIBITS

Type #	Number	Date	Description	SpH	Stoc	Notice	Disp	Dt	Dis	By
			Offered By: DEF 001 County Board of Appeals Of Ba 001 Set List For Motions CANCEL							0

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1748

September Term, 1996

MARK P. JENKINS, et ux.

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

Moylan,  
Sonner,  
Plitt, Emory A., Jr. (Specially  
Assigned).

JJ.

PER CURIAM

Filed: June 27, 1997

#03C955091

On September 8, 1994, Drs. Mark and Adrienne Jenkins, the appellants, filed a Petition for a Special Hearing seeking a legal, non-conforming use designation for their property located at 7100 York Road, which was being partly rented for residential use and partly used by the appellants as a dental office. On November 2, 1994, having conducted a hearing on the petition, Lawrence E. Schmidt, the Zoning Commissioner for Baltimore County, ruled that the appellants' use of the property was a legal, non-conforming use. Representatives acting on behalf of the Rogers Forge Community Association and the People's Counsel for Baltimore County, the appellees, filed a de novo appeal with the County Board of Appeals of Baltimore County (the "Board"). On May 31, 1995, after having conducted a hearing, the Board granted approval of a dental office on the property as a legal non-conforming use subject to the restriction that the dental practice be operated by the owner of the property. The appellees appealed the Board's decision to the Circuit Court for Baltimore County. On July 31, 1996, Judge Barbara Kerr Howe reversed the Board's decision. Judge Howe's decision was later vacated, but then re-entered on September 9, 1996. On appeal to this Court, the appellants raise a single issue.

Whether the Circuit Court erred in reversing the decision of the Board to grant non-conforming use status for 7100 York Road?

The relevant facts in this appeal are undisputed. The appellants are owners of a house located at 7100 York Road, which is situated in a residential community known as Rodgers Forge. In 1976, the appellants purchased the property from Dr. Philip C.

-2-

Deardorff. Dr. Deardorff had purchased the property in the early 1950's, and used the first floor of the property as a dental office and the second floor as a personal residence. From 1976 to 1988, the appellants used the property in an identical fashion.

The appellees do not contest that the appellants' use of the property as their primary residence and their dental office in this fashion was permissible. In 1988, however, the appellants moved their place of residence from the York Road property to a neighboring community. Thereafter, the appellants rented the second floor of the house for residential purposes and continued to maintain their dental office on the first floor.

It is the appellants' position that this use of the property is a legal, non-conforming use because 1) the pre-1955 Baltimore County Zoning Regulations permitted the property to be used as a residential rental property and dental office and 2) the pre-1955 regulations apply to this property. Specifically, the appellants argue that because Dr. Deardorff first opened his dental office in the early 1950's and the property has continually been used as a dental office since that time, the property is subject to the pre-1955 Baltimore County Zoning Regulations (B.C.Z.R.) for an "A" residence zone. Section III of the pre-1955 B.C.Z.R. provided in part:

A. Use Regulations: In any "A" Residence Zone, except as hereinafter expressly provided, no building or land shall be used and no building or structure shall be hereafter erected, altered, repaired or used except for one or more of the following uses:



IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR  
FOR BALTIMORE COUNTY, RODGERS FORGE  
COMMUNITY ASSOCIATION, INC., HONEY  
HOLSTON, INDIVIDUALLY, AND  
DONALD GERDING, INDIVIDUALLY  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF THE  
APPLICATION OF MARK P. JENKINS, ET UX  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE WEST SIDE YORK ROAD  
CHUMLEIGH AVENUE (7100 YORK ROAD)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 95-95-SPH

CIVIL  
ACTION  
No. 3-C-95-5091

AMENDED CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland  
Rules of Procedure, Harry E. Buchheister, Jr., constituting the  
County Board of Appeals of Baltimore County, has given notice by  
mail of the filing of the Petition for Judicial Review to the  
representative of every party to the proceeding before it; namely,  
Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room  
47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204,  
Rogers Forge Community Association, Inc. and Honey Holston, 94  
Dunkirk Road, Rogers Forge, MD 21212, and Donald Gerding, 335 Old  
Trail, Petitioners; Francis X. Borgerding, Esquire, DiNenna and  
Breschi, 409 Washington Avenue, Suite 600, Towson, MD 21204,  
Counsel for Mr. Jenkins; Mr. and Mrs. Mark P. Jenkins, 7100 York  
Road, Baltimore, MD 21212; a copy of which Amended Notice is

RECEIVED AND FILED  
95 JUL 26 PM 1:15  
CLERK OF COURT

95-95-SPH, MARK P. JENKINS, ET UX (Amended Notice)

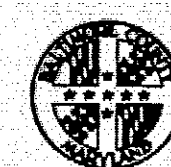
File No. 3-C-95-5091

attached hereto and prayed that it may be made a part hereof.

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Amended  
Certificate of Notice has been mailed to Peter Max Zimmerman,  
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400  
Washington Avenue, Towson, MD 21204, Rogers Forge Community  
Association, Inc. and Honey Holston, 94 Dunkirk Road, Rogers Forge,  
MD 21212, and Donald Gerding, 335 Old Trail, Petitioners; Francis  
X. Borgerding, Esquire, DiNenna and Breschi, 409 Washington Avenue,  
Suite 600, Towson, MD 21204, Counsel for Jenkins; Mr. and Mrs.  
Mark P. Jenkins, 7100 York Road, Baltimore, MD 21212, this 26th  
day of July, 1995.

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

July 26, 1995

Francis X. Borgerding, Jr., Esquire  
DiNENNA AND BRESCHI  
Suite 600  
Mercantile-Towson Building  
409 Washington Avenue  
Towson, MD 21204

RE: Civil Action No. 3-C-95-5091  
MARK P. JENKINS, ET UX

Dear Mr. Borgerding:

Notice is hereby given, in accordance with the Maryland Rules  
of Procedure, that a Petition for Judicial Review was filed on June  
15, 1995, in the Circuit Court for Baltimore County from the  
decision of the County Board of Appeals rendered in the above  
matter. Any party wishing to oppose the petition must file a  
response within 30 days after the date of this letter, pursuant to  
Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter,  
including, but not limited to, any other Petition for Judicial  
Review, must be filed under Civil Action No. 3-C-95-5091.

Enclosed is a copy of the Amended Certificate of Notice which  
has been filed in the Circuit Court.

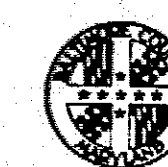
Very truly yours,

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe  
Legal Secretary

Enclosure

cc: Mr. & Mrs. Mark P. Jenkins  
J. Carroll Holzer, Esquire  
Pat Keller /Planning  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon /PDM  
W. Carl Richards /PDM  
Virginia W. Barnhart, County Attorney

Printed with Soybean Ink  
on Recycled Paper



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

July 26, 1995

Peter Max Zimmerman  
People's Counsel for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Civil Action No. 3-C-95-5091  
MARK P. JENKINS, ET UX

Dear Mr. Zimmerman:

In accordance with Rule 7-205(c) of the Maryland Rules of  
Procedure, the County Board of Appeals is required to submit the  
record of proceedings of the petition for judicial review which you  
have taken to the Circuit Court for Baltimore County in the above-  
entitled matter within sixty days.

The cost of the transcript of the record must be paid by you.  
In addition, all costs incurred for certified copies of other  
documents necessary for the completion of the record must also be  
at your expense.

The cost of the transcript, plus any other documents, must be  
paid in time to transmit the same to the Circuit Court within sixty  
days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Amended Certificate of Notice has  
been filed in the Circuit Court.

Very truly yours,

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe  
Legal Secretary

Enclosure

c: Rodgers Forge Community Assn.  
c/o Honey Holston  
Donald Gerding

Printed with Soybean Ink  
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IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR  
FOR BALTIMORE COUNTY, RODGERS FORGE  
COMMUNITY ASSOCIATION, INC., HONEY  
HOLSTON, INDIVIDUALLY, AND  
DONALD GERDING, INDIVIDUALLY  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF THE  
APPLICATION OF MARK P. JENKINS, ET UX  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE WEST SIDE YORK ROAD  
CHUMLEIGH AVENUE (7100 YORK ROAD)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 95-95-SPH

CIVIL  
ACTION  
No. 3-C-95-5091

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland  
Rules of Procedure, Harry E. Buchheister, Jr., constituting the  
County Board of Appeals of Baltimore County, has given notice by  
mail of the filing of the Petition for Judicial Review to the  
representative of every party to the proceeding before it; namely,  
Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room  
47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204,  
Rogers Forge Community Association, Inc. and Honey Holston, 94  
Dunkirk Road, Rogers Forge, MD 21212, and Donald Gerding, 335 Old  
Trail, Petitioners; Francis X. Borgerding, Esquire, DiNenna and  
Breschi, 409 Washington Avenue, Suite 600, Towson, MD 21204,  
Counsel for Mr. Jenkins; Mr. and Mrs. Mark P. Jenkins, 7100 York  
Road, Baltimore, MD 21212; a copy of which Notice is attached

95-95-SPH, MARK P. JENKINS, ET UX

File No. 3-C-95-5091

hereto and prayed that it may be made a part hereof.

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of  
Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue,  
Towson, MD 21204, Rogers Forge Community Association, Inc. and  
Honey Holston, 94 Dunkirk Road, Rogers Forge, MD 21212, and Donald  
Gerding, 335 Old Trail, Petitioners; Francis X. Borgerding,  
Esquire, DiNenna and Breschi, 409 Washington Avenue, Suite 600,  
Towson, MD 21204, Counsel for Jenkins; Mr. and Mrs. Mark P.  
Jenkins, 7100 York Road, Baltimore, MD 21212, this 26th day of  
June, 1995.

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

PETITION OF PEOPLE'S COUNSEL FOR BALTI-  
MORE COUNTY, RODGERS FORGE COMMUNITY ASSN.,  
INC., HONEY HOLSTON, Individually, and  
DONALD GERDING, Individually

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY BOARD OF  
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF: IN THE MATTER OF THE  
APPLICATION OF MARK P. JENKINS, ET UX.  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE WEST SIDE YORK ROAD  
AND CHUMLEIGH AVENUE (7100 YORK ROAD)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD OF  
APPEALS, CASE NO.: 95-95-SPH

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Civil Action No.

3-C-95-5091

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, RODGERS FORGE COMMUNITY  
ASSOCIATION, INC., HONEY HOLSTON, Individually, and DONALD GERDING,  
Individually, hereby request judicial review of the May 31, 1995 County  
Board of Appeals' Opinion in the above case. PEOPLE'S COUNSEL, RODGERS  
FORGE COMMUNITY ASSOCIATION, INC., HONEY HOLSTON, Individually, and  
DONALD GERDING, Individually, were parties to the proceedings before the  
County Board of Appeals in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland  
Rules of Procedure.

*Peter Max Zimmerman*  
PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

*Carole S. Demilio*  
CAROLE S. DEMILIO  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-2188

95 JUL 26 PM 1:15

ROGERS FORGE COMMUNITY ASSN., INC.

BY *Honey Holston*  
Honey Holston, President  
94 Dunkirk Road  
Baltimore, MD 21212  
(410) 377-4062

*Donald Gerding*  
DONALD GERDING, Individually  
335 Old Trail  
Baltimore, MD 21212  
(410) 825-0894

*Honey Holston*  
HONEY HOLSTON, Individually  
94 Dunkirk Road  
Baltimore, MD 21212  
(410) 377-4062

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of June, 1995, a copy of the  
foregoing Petition for Judicial Review was mailed to Francis X. Borgerding,  
Esquire, DiNenna and Breschi, 409 Washington Avenue, Suite 600, Towson, MD  
21204, attorney for Mark P. Jenkins, et ux.

*Peter Max Zimmerman*  
PETER MAX ZIMMERMAN



IN THE MATTER OF THE \* BEFORE THE  
THE APPLICATION OF \* COUNTY BOARD OF APPEALS  
MARK P. JENKINS, ET UX \* OF  
FOR A SPECIAL HEARING ON \*  
PROPERTY LOCATED ON THE WEST \* BALTIMORE COUNTY  
SIDE YORK ROAD AND CHUMLEIGH \*  
AVENUE (7100 YORK ROAD) \* CASE NO. 95-95-SPH  
9TH ELECTION DISTRICT \*  
4TH COUNCILMANIC DISTRICT \*  
\* \* \* \* \*

#### OPINION

This matter comes before the Board of Appeals as an appeal of a decision by the Zoning Commissioner granting a Special Hearing for approval of a dental office on a property zoned D.R. 5.5 as a legal, nonconforming use.

The property at 7100 York Road consists of a total area of 17,000 sq. ft., the first floor of which is used as a dental office and the second floor for residential uses. The property is located in the Rodgers Forge community of well-maintained townhouses and single detached houses.

Paul Lee, Professional Engineer, testified that the first floor is the dentist's office of Mark Jenkins and his wife, Adrienne, who have offered their professional services from the location for the past nineteen years. The second floor is an apartment which served as their residence.

Mr. Lee described the property as heavily landscaped and shielded from other properties and York Road by mature trees. A small sign advertises the dental office, which otherwise would not be recognized as anything but a residential property surrounded by detached houses. The location serves as an ideal buffer from commercial businesses on adjacent York Road properties.

Dr. Mark Jenkins testified that he purchased the property from a dentist who owned the property since the 1950's and from which a

Case No. 95-95-SPH Mark P. Jenkins, et ux 2  
dental practice was provided for more than twenty years. In 1976, the Jenkins purchased the subject site for their place of residence and the continuation of the property's use as a dental office.

Numerous residents testified to the positive impact the Jenkins have had on the community for nineteen years, as 80 percent of their patients reside in Rodgers Forge and generally walk to the office. Several senior residents testified of the uninterrupted existence of the dental office and of its convenience. In addition to the professional activities of the dental office five days of the week from 9:30 a.m. to 5:30 p.m., the Jenkins also often serve routine needs of their patients and people suddenly in a crisis situation. In 1988, the family found the apartment no longer adequate for their needs and moved to the community of Anneslie, a half-mile away. They then rented out the second floor apartment to a residential tenant.

Several witnesses testified in opposition to the Petition. Elizabeth Heusler, a resident of Rodgers Forge and secretary of the Rodgers Forge Community Association (RFCA), explained that she does not want future commercial activity at the location.

Honey Holston, President of RFCA, testified to the efforts being made to safeguard and enforce zoning regulations in the community of 1,000 homes. She expressed concern about the "plethora of rental homes" and houses with apartments in the Rodgers Forge community, and of zoning considerations that threaten the long-established advantages of Rodgers Forge. Ms. Holston expressed no dissatisfaction with the Jenkins, but is being alert to all violations of regulations. As President of RFCA, she stated that the Board of Directors of twenty-three residents decided to

Case No. 95-95-SPH Mark P. Jenkins, et ux 3  
pursue the subject zoning issue without consulting the membership as an ongoing responsibility expected of the directors.

Donald Gerding, an area resident of forty years and an active leader in area community associations, testified to his support for both commercial and residential sides of issues, as they arise. He sees potential commercial encroachment on the west side of York Road comparable to residential office uses south on York Road in Anneslie. Mr. Gerding emphasized that an owner-occupied property brings responsibility. The quality of life in Rodgers Forge is very good, but they face problems of changes that can come with commercial encroachment. The Master Plan sees no justification for additional commercial development along York Road. He foresees the dental office with a residence as a potential for further commercial intrusion. Mr. Gerding remarked that the site is landlocked in a manner that limits parking possibilities that will worsen as a commercial property.

The Petitioners seek a nonconforming use designation of their dental office so as to legitimize a use that has existed at the location for over forty years. A nonconforming use as defined in Section 101 of the Baltimore County Zoning Regulations (BCZR) is "a legal use that does not conform to a use regulation for the zone in which it is located," which in the instant case is the D.R. 5.5 zone. At times, the designation of a nonconforming use is applied to grandfather a use that otherwise would not be permissible. The nonconforming use may be contrary to the spirit and intent of the zoning regulation, but because they predate the date of new legislation, the use is permitted to continue.

An original "A" residential zone of the subject site during

Case No. 95-95-SPH Mark P. Jenkins, et ux 4  
the years of Dr. Dierdorf's ownership permitted a professional office when the dentist was also residing at the dwelling. Subsequent changes during following years, the R-6 zone and eventually the D.R. 5.5 zone, permitted the office of a dentist in the same dwelling used as a residence. In 1982, Bill 105 amended the regulation to limit the office space to no more than 25 percent of the total floor area of the building. The subject property in its nonconforming status was not required to comply to this regulation.

In this majority opinion of the Board, we are particularly persuaded that Section 104.1 places emphasis on the change in the "occupational use" of the office, and not the residential aspect of the nonconforming status. Section 104.1 clarifies that a nonconforming use may continue, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

The testimony has been unquestioned that Dr. Dierdorf resided on the property while he operated his dental practice, and the Jenkins continued the arrangement after they purchased the residential property with a first floor dentist's office. With the Jenkins' move from the apartment on the second floor to a new home close-by, should the services of the dental office cease? The second floor apartment remains as a residential purpose, and the property continues as an enhancing and valued asset to the community. Hundreds of residents of the surrounding neighborhoods testified or recorded their appreciation for the services of the

Case No. 95-95-SPH Mark P. Jenkins, et ux 5  
dental office.

The Board is persuaded that the present use of the subject property these many years should be continued, and the Petition for Special Hearing should be granted.

#### ORDER

IT IS THEREFORE this 31st day of May, 1995 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing seeking approval of a dental office on the subject property, zoned D.R. 5.5, as a legal, nonconforming use, in accordance with Petitioners' Exhibit #1, be and the same is hereby GRANTED, subject to the following restrictions:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded; and
2. The nonconforming use is restricted to a dental practice operated by the owner of the property at 7100 York Road.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

*William T. Hackett*  
William T. Hackett, Acting Chairman  
*Harry E. Buchheiser, Jr.*  
Harry E. Buchheiser, Jr.

IN THE MATTER OF THE \* BEFORE THE  
THE APPLICATION OF \* COUNTY BOARD OF APPEALS  
MARK P. JENKINS, ET UX \*  
FOR A SPECIAL HEARING ON \* OF  
PROPERTY LOCATED ON THE WEST \* BALTIMORE COUNTY  
SIDE YORK ROAD AND CHUMLEIGH \*  
AVENUE (7100 YORK ROAD) \*  
9TH ELECTION DISTRICT \* CASE NO. 95-95-SPH  
4TH COUNCILMANIC DISTRICT \*  
\* \* \* \* \*

#### DISSENTING OPINION

As a result of this member's evaluation of the testimony and evidence produced at the hearing, and as indicated during public deliberation, this Board member must respectfully dissent from the majority opinion; and would rule that the nonconforming use on the subject site is lost; and, therefore, that the Petition for Special Hearing should be denied.

*S. Diane Levero*  
S. Diane Levero  
County Board of Appeals

Date: May 31, 1995



#### County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

May 31, 1995

Rodgers Forge Community Assn., Inc.  
c/o Ms. Honey Holston  
94 Dunkirk Road  
Rodgers Forge, MD 21212

RE: Case No. 95-95-SPH  
Mark P. Jenkins, et ux

Dear Ms. Holston:

Enclosed please find a copy of the majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of Ms. Levero's Dissenting Opinion.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,  
*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Francis X. Borgerding, Jr., Esquire  
Mr. & Mrs. Mark P. Jenkins  
Donald Gerding  
People's Counsel for Balto. County  
Pat Keller  
Lawrence E. Schmidt  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director/ZADM  
Virginia W. Barnhart, County Attorney



#### County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

May 31, 1995

Rodgers Forge Community Assn., Inc.  
c/o Ms. Honey Holston  
94 Dunkirk Road  
Rodgers Forge, MD 21212

RE: Case No. 95-95-SPH  
Mark P. Jenkins, et ux

Dear Ms. Holston:

Enclosed please find a copy of the majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of Ms. Levero's Dissenting Opinion.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,  
*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Francis X. Borgerding, Jr., Esquire  
Mr. & Mrs. Mark P. Jenkins  
Donald Gerding  
People's Counsel for Balto. County  
Pat Keller  
Lawrence E. Schmidt  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director/ZADM  
Virginia W. Barnhart, County Attorney

RECEIVED  
MAY 31 1995

ZADM



IN RE: PETITION FOR SPECIAL HEARING  
W/S York Road and Chumleigh Road  
(7100 York Road)  
9th Election District  
4th Councilmanic District  
Mark P. Jenkins, et ux  
Petitioners

\* BEFORE THE  
\* ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 95-85-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as 7100 York Road, located in the vicinity of Rodgers Forge in northern Baltimore County. The Petition was filed by the owners of the property, Mark P. and Adrienne Jenkins, seeking approval of a dental office on the subject property, zoned D.R. 5.5, as a legal, nonconforming use. The subject property and relief sought are more particularly described on the site plan submitted into evidence as Petitioner's Exhibit 1.

Appearing as the Petitioners were Mark and Adrienne Jenkins, property owners. Several residents of the surrounding community also appeared on their behalf. Also appearing in support of the Petition was Paul Lee, Professional Engineer. The Petitioners were represented by Francis X. Borgerding, Jr., Esquire. There were no Protestants present.

Testimony and evidence offered revealed that the subject property consists of a gross area of 16,966 sq.ft. and is improved with a two-story structure, the first floor of which is used as a dental office. As noted above, this property is located at the corner of York Road and Chumleigh Road adjacent to the long-established residential community of Rodgers Forge. The Rodgers Forge community is primarily comprised of townhomes and is a well-maintained neighborhood which has existed for many years.

The property's location at the intersection of York Road and Chumleigh Road, makes it an ideal buffer from the commercial activity which abuts York Road near this locale and the high volume of traffic which utilizes that roadway.

On behalf of the Petitioners, Mr. Lee testified that the building is presently devoted to two uses. On the first floor is a dentist's office which is operated by Mr. and Mrs. Jenkins, both of whom are licensed dentists who have operated their practice from this location for the past 18 years. The second floor is an apartment which is leased for residential purposes. The building also contains a basement which is used for storage purposes only. The dwelling also features a concrete patio to the rear and a small porch to the front. Although a small sign on the York Road side of the property advertises the existence of the dental office, the property casts a residential appearance. Moreover, as the photographs submitted show, the property is heavily landscaped and the building is shielded from neighboring properties and York Road traffic by many mature trees.

As to the history of this site, Dr. Mark Jenkins testified that he has owned the property for the past 18 years. He testified that he and his wife have operated their dental practice from this location since their purchase of the property and that there has never been a period of time during which their practice was discontinued or abandoned. Moreover, for the first 12 years of their ownership, Mr. & Mrs. Jenkins resided in the apartment on the second floor of the dwelling. However, several years ago, the need for larger living quarters arose as their family grew and the Jenkins relocated to the Anneslie community which is located not far from the subject site. The Anneslie community is comprised mainly of single family dwellings.

Further testimony indicated that Mr. & Mrs. Jenkins purchased the subject property from a Dr. Dierdorf, who had owned the property since the early 1950s. Dr. Dierdorf was also a dentist and had conducted his practice from this location for 22 years. The uncontradicted testimony offered was that there has been no discontinuance of the dental office at this location, either by Dr. Dierdorf, or the Jenkins since it was opened in the 1950s.

As to the present office, this is surely a neighborhood practice which provides a needed service to the surrounding residential community. Dr. Jenkins testified that 80% of his patients reside in Rodgers Forge and most walk to his office. The present and past use of this property brings to the mind of this Zoning Commissioner a simpler time when many communities had a neighborhood dentist, doctor, lawyer or other professional. Clearly, the professional activity which goes on here is not high profile in nature. The practice is designed to serve the routine needs of its patients. Dr. Jenkins, in fact, related a story when recently a child who lives in Rodgers Forge fell from his bike and suffered injuries to his dentition. A quick phone call to Dr. Jenkins by the boy's family resulted in Dr. Jenkins arriving and opening his office on a Saturday afternoon so that the child could receive emergency treatment. It is clear that the Rodgers Forge community will be poorer if this practice cannot remain at this location. Testimony was that the office is open Monday through Friday, from 9:30 AM to 5:30 PM and that an average of 10 to 12 patients are seen per day. There are also two staff employees who are present daily.

The Petitioners now come before me seeking a nonconforming use designation of the dental office so as to legitimize this use. One wonders why the propriety of this operation has been brought into question, since

it has existed at this location for many years, apparently without complaint. Moreover, as noted above, the office clearly addresses a real need in the Rodgers Forge community.

In any event, a nonconforming use is defined in Section 101 of the B.C.Z.R. as "a legal use that does not conform to a use regulation for the zone in which it is located or to a specific regulation applicable to such a use..." Often, the designation of a nonconforming use is utilized to grandfather an otherwise illegal use. Moreover, nonconforming uses are regulated in Section 104 of the B.C.Z.R. Therein it is provided that a nonconforming use cannot be abandoned or discontinued. Other limitations are provided as to the expansion of nonconforming uses.

Generally, nonconforming uses are not favored at law. See McKenny v. Baltimore County, Maryland, 39 Md. App. 257, 385 A2d 96 (1978). In many cases, they are considered to be contrary to the spirit and intent of the zoning ordinance and are permitted only because of they predate the effective date of the prohibiting legislation.

Zoning first came to Baltimore County in 1945 when the County Commissioners adopted the first set of zoning regulations. Within those regulations, seven different zones were created to regulate residential, commercial and industrial uses. The subject site, now zoned D.R. 5.5, was at that time zoned "A" a residential classification. Moreover, the "A" zoning classification permitted a professional office when same was situated in the building used by the practitioner as his or her private dwelling, provided that no name plate exceeding 2 sq.ft. in area was displayed. Apparently, Dr. Dierdorf opened his office at this location when this revision of the B.C.Z.R. was in effect. Clearly, his professional office

was permitted at this location pursuant to the regulations in effect at that time.

The B.C.Z.R. were comprehensively amended and re-enacted in 1955. In that time, different zoning classifications were adopted, including the R-6 designation which eventually became D.R. 5.5. In the R-6 zone, offices of a doctor or dentist were permitted in the same dwelling used by the professional as his residence. However, an additional requirement was added that not more than 25% of the total floor area of the structure could be devoted to the office use. A substantially similar regulation was readopted and exists in the present version of the B.C.Z.R.

In the instant case, the Petitioners are not required to comply with that standard which limits the professional office to 25% of the total floor area of the structure. Clearly, the dental office existed prior to the effective date of the zoning regulations enacted in 1955 when the 25% floor area requirement was initially included in the professional office definition. It is clear the subject dental office was permissible and complied with the regulations in effect in the early 1950s when the office was opened. The testimony and evidence were uncontradicted that Dr. Dierdorf resided on this property while he operated his practice. The Jenkins continued this arrangement when they acquired the property. The sole troubling aspect of this case is the effect of the Jenkins' relocation of their residence to the Anneslie community some seven years ago. It is clear that the Jenkins no longer reside on the subject property; however, it is to be noted that the second floor apartment continues to be rented and used for residential purposes. Based on the uncontradicted testimony and evidence presented, I am satisfied that the spirit and intent of the ordinance will be observed if the Petition for Special Hearing is approved.

I am particularly mindful of the needed services which this office provides to the surrounding residential community. Moreover, the character of the site and continued residential use of the building is of particular note. Although not occupied by the Jenkins as their home, the property continues to have a residential character in appearance and is, in fact, utilized for residential purposes.

This Petition is filed pursuant to Section 500.7 of the B.C.Z.R. which provides the Zoning Commissioner with broad authority to conduct such hearings and pass such orders thereon as are necessary for the proper enforcement and interpretation of the regulations. Moreover, Article 1.B of the B.C.Z.R. regulates the uses and standards applicable for all D.R. zones. Essentially, this Article provides that the D.R. zones are created so as to foster a greater variety of housing types and allow flexibility in development of residential communities. In my view, the present use of the subject property as outlined above meets the criteria established within the B.C.Z.R. and furthers the goals stated therein. For all of these reasons, I am persuaded that the spirit and intent of the ordinance will be observed if the Petition for Special Hearing should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of November, 1994 that the Petition for Special Hearing seeking approval of a dental office on the subject property, zoned D.R. 5.5, as a legal, nonconforming use, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such

time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

Suite 112 Courthouse  
409 Washington Avenue  
Towson, MD 21204

November 2, 1994

(410) 887-4386

Francis X. Borgerding, Jr., Esquire  
409 Washington Avenue, Suite 600  
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING  
W/S York Road and Chumleigh Road  
(7100 York Road)  
9th Election District - 4th Councilmanic District  
Mark P. Jenkins, et ux - Petitioners  
Case No. 95-85-SPH

Dear Mr. Borgerding:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

cc: Drs. Mark and Adrienne Jenkins  
7100 York Road, Baltimore, Md. 21212

People's Counsel

File



RE: PETITION FOR SPECIAL HEARING  
7100 York Road, N/S Chumleigh Road,  
55' W of c/l York Road, 9th  
Election Dist., 4th Councilmanic  
Mark P. Jenkins and Adrienne Jenkins  
Petitioners

BEFORE THE  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
CASE NO. 95-95-SPH

#### ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

PETER MAX DIMMERMAN  
People's Counsel for Baltimore County

CAROL S. DEMILLO  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-2188

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of September, 1994, a copy of the foregoing Entry of Appearance was mailed to Francis X. Borgerding, Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21204, attorney for Petitioners.

PETER MAX DIMMERMAN



## Petition for Special Hearing to the Zoning Commissioner of Baltimore County

for the property located at 7100 York Rd., Baltimore, MD 21212  
which is presently zoned D.R. 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property stated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve a non-conforming use status for a dental office in a residence in a D.R. 5.5 zone

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Owner:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

Francis X. Borgerding, Jr.

(Type or Print Name)

Signature

Address

City State Zipcode

(We do solemnly declare and affirm, under the penalties of perjury, that we are the legal owner(s) of the property which is the subject of this Petition.)

Legal Owner(s):

Mark P. Jenkins

(Type or Print Name)

Signature

Adrienne Jenkins

(Type or Print Name)

Signature

7100 York Road

Baltimore MD 21212

City State Zipcode

Name Address and phone number of representative to be contacted

Francis X. Borgerding, Jr.

409 Washington Ave., Ste. 600

Towson, MD 21204

City State Zipcode

Office Use Only

ESTIMATED LENGTH OF HEARING

unavailable for hearing

the following date

ALL OTHER

REVIEWED BY: 222 DATE: 9/8/94

Paul Lee P.E.

Paul Lee Engineering Inc.

304 W. Pennsylvania Ave.

Towson, Maryland 21204

410-221-5341

#### DESCRIPTION

7100 YORK ROAD  
ELECTION DISTRICT 904  
BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the North side of Chumleigh Road, said point also being located Westerly 55 feet ± from the center of York Road; thence binding on the North side of Chumleigh Road (1) N 78°08'00" W 125 feet; thence leaving said North side of Chumleigh Road (2) N 11°52'00" W 70.00 feet; thence (3) S 78°08'00" E 150.00 feet to the West side of York Road; thence binding on the West side of York Road (4) S 11°52'00" W 45.00 feet and by acurve to the right (5) R=25.00 feet, L=39.27 feet to the point of beginning. Containing 10,366 square feet of land, more or less.



Engineers - Surveyors - Site Planners

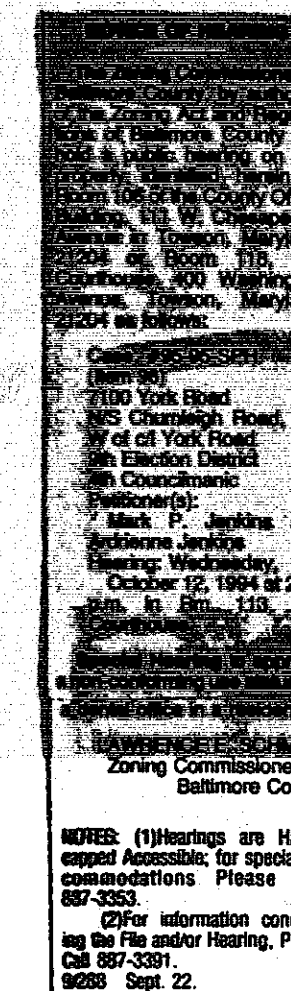
#### CERTIFICATE OF PUBLICATION

TOWSON, MD., 9/22, 1994

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/22, 1994

THE JEFFERSONIAN,

A. Henrichs  
LEGAL AD. - TOWSON



NOTES: (1) Hearings are held on Wednesdays at 2:00 p.m. in Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204. (2) For information concerning the filing of a petition, please call 887-3353. (3) For information concerning the filing of a petition, please call 887-3353.



Zoning Administration & Development Management  
400 Washington Avenue  
Towson, Maryland 21204

receipt  
95-95-SPH

Admission R 071-6150

Number

Item: 96

Take-In: 755X

By: 755X

Total: \$ 25.00

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Baltimore County Government  
Office of Zoning Administration  
and Development Management

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

OCT. 05 1994

Francis X. Borgerding, Jr.  
409 Washington Ave., Suite 600  
Towson, Maryland 21204

RE: Item No. 96Ca no No. 95-95 Petitioner: Jenkins

Dear Petitioner:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on September 08, 1994 and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

Very truly yours,  
W. Carl Richards, Jr.  
Zoning Supervisor

Printed with Soybean Ink  
on Recycled Paper

Maryland Department of Transportation  
State Highway Administration

O. James Lighthizer  
Secretary  
Hal Kassoff  
Administrator

9-14-94

Ms. Julie Winiarski  
Zoning Administration and  
Development Management  
County Office Building  
Room 109  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Baltimore County  
Item No.: +96 (MJK)

Dear Ms. Winiarski:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,  
Bob Small  
for David Ramsey, Acting Chief  
Engineering Access Permits  
Division

BS/

My telephone number is \_\_\_\_\_  
Maryland Relay Service for Impaired Hearing or Speech  
1-800-735-2268 Statewide Toll Free  
Mail Address: P.O. Box 717 • Baltimore, MD 21203-0717  
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: September 26, 1994  
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief  
Developers Engineering Section

RE: Zoning Advisory Committee Meeting  
for September 26, 1994  
Item No. 96

The Developers Engineering Section has reviewed the subject zoning item. The issue of parking for the office use should be adequately addressed.

RWB:aw

Baltimore County Government  
Fire Department

700 East Joppa Road  
Towson, MD 21286-5500

Office of the Fire Marshal  
(410) 887-4880

DATE: 09/28/94

Francis X. Borgerding, Jr.  
Director  
Zoning Administration and  
Development Management  
County Office Building  
Towson, MD 21204  
MAIL STOP-1105

RE: Property Owner: SEE BELOW  
LOCATION: SEE BELOW  
Zoning Agency: \_\_\_\_\_

Relevant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be submitted or incorporated into the final plans for the property.

The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 'Life Safety Code', 1991 edition prior to occupancy.

IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 92, 93 AND 94

SEP 28 1994

FRANCIS X. BORGERDING, JR.  
Fire Marshal Office, PHONE 887-4880, TG-1105F

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: ZADM Joyce Watson DATE: 9/22/94

FROM: DEPRM  
Development Coordination

SUBJECT: Zoning Advisory Committee  
Agenda: Sept 19

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee items:

Item #'s: 90  
95  
96  
97  
98  
99  
88

LS:SP  
LETTY2/DEPRM/XTSBBP

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: September 15, 1994  
Zoning Administration and  
Development Management

FROM: Pat Keller, Director  
Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s):  
Item Nos. 90, 93, 94, 95, 96, 97, 98 and 99.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by: Jeffrey W. Long  
Division Chief: \_\_\_\_\_  
PK/JL:lw

ZAC, 90/PZONE/ZAC1

Item Number: 96  
Planner: MJK  
Date Filed: 9-8-94

PETITION PROCESSING FLAG

This petition has been accepted for filing, after an initial review, and has been placed on the agenda for the zoning advisory committee. However, the following items were found to be missing or incomplete when the petition was included on the agenda by Sophia. A copy of this "flag" will be placed in the case file for the Zoning Commissioner's review. The planner that accepted the petition for filing has the option of notifying the petitioner and/or attorney prior to the hearing or the Zoning Commissioner's review of the petition regarding the items noted below. If the petitioner/attorney is contacted by the planner, it is the petitioner's ultimate decision and responsibility to make a proper application, address any zoning conflicts, and to file revised petition materials if necessary. Delays and unnecessary additional expenses may be avoided by correcting the petition to the proper form.

Need an attorney

The following information is missing:

Descriptions, including accurate beginning point  
Actual address of property  
Zoning  
Acreage  
Plats (need 12, only \_\_\_\_\_ submitted)  
200 scale zoning map with property outlined  
Election district  
Councilmanic district  
BCZR section information and/or wording  
Hardship/practical difficulty information  
Owner's signature (need minimum 1 original signature) and/or  
Contract purchaser's signature (need minimum 1 original signature) and/or printed name and/or address and/or telephone number  
Signature (need minimum 1 original signature) and/or printed name and/or title of person signing for legal owner/contract purchaser  
Power of attorney or authorization for person signing for legal owner and/or contract purchaser  
Attorney's signature (need minimum 1 original signature) and/or printed name and/or address and/or telephone number  
Notary Public's section is incomplete and/or incorrect and/or commission has expired

PET-FLAG (TXTSOOPH)  
11/17/93

Baltimore County Government  
Office of Zoning Administration  
and Development Management

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

December 21, 1994

Francis X. Borgerding, Jr., Esquire  
409 Washington Avenue, Suite 600  
Towson, MD 21204

RE: Petition for Special Hearing  
W/S York Road and Chumleigh Road  
(7100 York Road)  
9th E.D.-4th C.D.  
Mark Jenkins, et ux-Petitioners  
Case No. 95-95-SPH

Dear Mr. Borgerding:

Please be advised that an appeal of the above-referenced case was filed in this office on December 1, 1994 by J. Carroll Holter. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Eileen O. Hennegan at 887-3353.

Sincerely,  
Arnold Jablon  
Director

AJ:eh  
c: Peoples Counsel

Printed with Soybean Ink  
on Recycled Paper



# APPRAISAL

Petition for Special Hearing  
W/S York Road and Chumleigh Road  
(7100 York Road)  
9th Election District - 4th Councilmanic District  
Mark P. Jenkins, et ux-PETITIONER  
Case No. 95-95-SPH

Petition(s) for Special Hearing

Description of Property

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Plat to Accompany Petition  
2 - Zoning Regulations and Restrictions for Baltimore County  
3 - Baltimore County Zoning Regulations, adopted March 30, 1988  
4A-4J- 10 Photographs  
5 - Copy of Deed  
6 - List of residents in support of petition

Zoning Commissioner's Order dated November 2, 1994 GRANTED

Notice of Appeal received on December 1, 1994 from J. Carroll Holzer, Esquire

cc: Mr. and Mrs. Mark P. Jenkins, 7100 York Road, Balto., 21110  
Francis X. Borgerding, Jr., Esquire, 409 Washington Ave., Suite 600, Towson 21204  
J. Carroll Holzer, Holzer and Lee, 305 Washington Avenue, Towson 21204  
People's Counsel of Baltimore County, W.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Supervisor  
Docket Clerk  
Arnold Jablon, Director of ZADM

MARK P. JENKINS, ET UX

95-95-SPH

W/S York Road and Chumleigh Avenue  
(7100 York Road) 9th Election District

RE: Petition for Special Hearing

No. 95-95-SPH

September 8, 1994 Petition for Special Hearing to approve a dental office in a residence in a D.R. 5.5 zone filed by Francis X. Borgerding, Jr., Esquire, on behalf of Mark P. and Adrienne Jenkins.

October 12 Hearing held on Petition by the Zoning Commissioner.

November 2 Order issued by the Zoning Commissioner wherein Petition for Special Hearing was GRANTED with one restriction.

December 1 Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Rodgers Forge Community Association, Inc. and Honey Holston, individually.

April 27, 1995 Hearing before the Board of Appeals.

May 18 Deliberation completed.

May 31 Opinion and Order issued by the majority of the Board in which the Petition for Special Hearing was GRANTED with restrictions. Dissenting Opinion by S. Diane Levero.

June 15 Petition for Judicial Review filed in the CCT by People's Counsel for Baltimore County, Rodgers Forge Community Assn., Inc., Honey Holston, individually, and Donald Gording, individually. (copy rec'd by CBA 6/23/95).

June 26 Certificate of Notice filed in the CCT.

July 26 Amended Certificate of Notice sent to interested parties.

August 15 Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.

July 31, 1996 Opinion issued by the CCT for Balto. Co.; decision of the CBA was REVERSED (Barbara Kerr Howe, J.)

September 12 Order issued by the CCT to release the 7/31/96 order so that 30-day appellate period now runs from 9/12/96 (Barbara Kerr Howe, J.)

August, 1996 Notice of Appeal filed in the CSA by Borgerding.

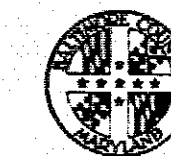
June 27, 1997 Opinion issued by the CSA; decision of the CCT is AFFIRMED (Moylan, Sonner, Plitt, Emory, JJ.)

1/31/95 -Notice of Assignment for hearing scheduled for Thursday, April 27, 1995 at 10:00 a.m. sent to following:

J. Carroll Holzer, Esquire  
Rodgers Forge Community Assn.  
Inc. /Honey Holston  
Francis X. Borgerding, Jr., Esq.  
Mr. & Mrs. Mark P. Jenkins  
People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

4/27/95 -Matter concluded before Board. To be scheduled for deliberation and parties notified by Notice.

5/09/95 - Notice of Deliberation sent to parties; deliberation scheduled for Thursday, May 18, 1995 at 10:00 a.m. (H.B.M.)



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

May 9, 1995

## NOTICE OF DELIBERATION

Having concluded this case on April 27, 1995, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

MARK P. JENKINS, ET UX  
CASE NO. 95-95-SPH

DATE AND TIME : Thursday, May 18, 1995 at 10:00 a.m.  
LOCATION : Room 48, Basement, Old Courthouse

cc: J. Carroll Holzer, Esquire Counsel for Appellants /Protestants  
Rodgers Forge Community Assn. Inc. /Honey Holston Appellants /Protestants

Francis X. Borgerding, Jr., Esq. Counsel for Petitioners  
Mr. & Mrs. Mark P. Jenkins Petitioners

People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
Donald Gording

Kathleen C. Weidenhammer  
Administrative Assistant

H.B.M. /copied

## COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

### MINUTES OF DELIBERATION

IN THE MATTER OF: Mark P. Jenkins, et ux  
Case No. 95-95-SPH

DATE : May 18, 1995 @ 10:00 a.m.

BOARD /PANEL : William T. Hackett (WTH)  
S. Diane Levero (SDL)  
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Weidenhammer  
Administrative Assistant

Among those present at the deliberation was the Petitioner and People's Counsel for Baltimore County.

PURPOSE --to deliberate issues and matter of petition presented to the Board; testimony and evidence taken at hearing of April 27, 1995. Written Opinion and Order to be issued by the Board.

WTH: We are here this morning for public deliberation on Case No. 95-95-SPH, Mark P. Jenkins. As is legislated by law, we must publicly deliberate this special hearing for the approval of a dentist's office on the subject site zoned D.R. 5.5 as a legal nonconforming use. I will reserve my statements and defer to Mr. Buchheister.

HEB: This case brings the question of when home office use in a D.R. zone versus simple office use when the owner lives elsewhere. The subject property, from testimony of a number of people, is well-maintained and, except for a very small sign, is hardly recognized as a residence with dental office surrounded by detached homes. Use as a home office at this site traces back to the '50s by a Dr. Dierdorf, a dentist, and the occupancy from 1976 to 1988 by the Jenkins, husband and wife, both dentists, continuing the dental practice when the Petitioner moved his family from the home office's upstairs apartment to a larger house several blocks away. To date, the dentist office use has been uninterrupted. Testimony by one of the neighbors, a long-time neighbor of some 38 years, Mrs. Clarke, indicated that even Dr. Dierdorf also moved from the apartment to another house before he sold to Dr. Jenkins; estimate that 80 percent of the patients are from Rodgers Forge community and other nearby communities. Numerous residents testified to the positive impact the Jenkins have had for 18 years, often times responding during hours when the

## Deliberation /Mark P. Jenkins, et ux Case No. 95-95-SPH

office was closed to emergencies that may have arisen.

Protestants are concerned by commercial encroachment, already extensively evidenced along York Road. Also concerned about a plethora of rental homes and rental apartments in houses that may have negative effects on property values and human values in Rodgers Forge community. Mrs. Holston, RPCA, emphasized they don't want another commercial activity at the residential property in the future. Protestants didn't have any problems with the Jenkins, but are concerned by their violation of regulations. Mr. Gording noted the York Road side of Anneslie and homes there converted to office use and is alarmed that owner-occupied properties versus saturation of absentee ownership.

In consideration of the support of many of the residents of the community and the uninterrupted dental practice, even after Dr. Jenkins moved in 1988, without protest from 1988 to 1995, it is my feeling that the special hearing for approval of a dental office on the subject property be granted, subject to the understanding that the nonconforming use is restricted to a dental service rendered by the property owner.

SDL: Section 104.1 states that a nonconforming use may continue only until there is any change from such nonconforming use to any other use, in which case the right to continue or use such nonconforming use terminates. Petitioner argues that use has not changed. Use of first floor as office has been continuous, and second floor used as residence. However, use has clearly changed from owner-occupied use under right grandfathered in as nonconforming use to straight office use with second floor as rental. Home occupation to straight office has terminated nonconforming use; would deny Petition for Special Hearing.

WTH: I too refer to 104.1 in trying to make decision on this piece of property which has been aptly described by Mr. Buchheister. What I concentrated on is the fact that a nonconforming use, and I think use is the key word, may continue / referenced change from such nonconforming use to any other use whatsoever or any abandonment of use -- do not see any change in the use of this property since apparently the day it was built. Has been a dental office, has been a residence, in most cases for owner but not necessarily. Use does not say owner must be one who lives there; one floor used for office, rest is residential. As long as that continues, I think use is a nonconforming use and would grant the special hearing; approval of dental office on subject site as legal

## Deliberation /Mark P. Jenkins, et ux Case No. 95-95-SPH

nonconforming use.

Closing statement by Chairman Hackett: The Board has deliberated in public; we will find that we have a majority opinion and a dissent, and we will issue same in the very near future.

Note: appellate period runs from date of written Opinion and Order and not from today's date.

Respectfully submitted,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

## BALTIMORE COUNTY, MARYLAND

### INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: April 1, 1998  
Permits & Development Management

FROM: Charlotte E. Radcliffe  
County Board of Appeals

SUBJECT: Closed File: 95-95-SPH  
MARK P. JENKINS, ET UX  
9th E; 4th C

As no further appeals have been taken since the Court of Special Appeal's June, 1997 Order, we are hereby closing the Board's file in this matter. The original file and exhibits were returned to your office by John Almond, Records Manager /CCT on February 17, 1998.

Attachment (CBA Case File No. 95-95-SPH)



IMPORTANT MESSAGE
TO:
DATE: 4/20/95 TIME: 2:15 P.M.
FROM:
OF:
PHONE:
FAX:
TELEPHONED:
CAME TO SEE YOU:
WANTS TO SEE YOU:
WILL FAX YOU:
Message:
Signed:

Chris uses street talk? - yes
Deft closes case
Reborel
Detective Brady Ballo P.D.
C.S.D. - Robbery
now in court on 6/23/95 @ 8:30 AM
P.D. Constantine Stokert - 64 v
720 AM
one of the subjects stated - you pulled it out -
you're in there
apt 2000 - Justin Bell
2nd of all you la Maxwell
checked - no him?
happen - you you la robbery & about to
Chris - take the notes -
Detention - work product gets destroyed

Peoples Counsel for Baltimore County v. Baltimore County Board of Appeals
Hearing Date Tuesday, February 20, 1995 Case# C95091
Facts People's Counsel for Baltimore County, Rodgers Forge Community Association, Inc., Honey Holston, and Donald Gerding individually, hereby request judicial review of the 5/31/95 County Board of Appeals' The opinion in the above case was filed via rule 7-202 of the Maryland Rules of Procedure.

Time Line
9/8/94 Petition for Special Hearing to approve a dental office in a residence in D.R. 5.5 zone filed by Francis X. Borgeding, Jr. Esquire, on behalf of Mark P. and Adrienne Jenkins.
9/22/94 Petition in Newspaper
10/12 Hearing held by Zoning Commissioner
4/27/95 Hearing before the Board of Appeals
5/31/95 Opinion and order issued by the majority of the Board in which the Petition for Special Hearing was granted with restrictions. Dissenting Opinion by S. Diane Levero.
6/15/95 petition for Judicial Review in Circuit Court by People's Counsel for Baltimore County.
9/15/95 Record of Proceeding filed in the Circuit Court for Baltimore County.

County Board of Appeal's determined that the appellees' property qualified as an ongoing nonconforming use.
The property location is 7100 York Road located in Rogers Forge. They currently operate the dental offices from the first floor of the dwelling, and currently rent the upstairs portion as residential space. The Jenkins purchased the property in 1976 and lived there until 1988. The neighborhood is concerned with encroachment. The Rogers Forge Community believes that the location no longer qualifies as a residence since they do not live there. Rogers Forge is a community of 177 homes and 600 apartments located south of Towson. Approximately 54% of the households are members of the community association. They have a board of Governors which has 23 members who then elect officers. The Jenkins (1em) did attempt to sell the property in 1994. The property has no parking. Jen states that many of the patients walk to the practice which is well suited for the many senior citizens.

The Issue is whether the property is a legal, nonconforming use of a dental property.
Issues:
1. Whether the subject property qualifies any longer as a home occupation use?

410 Md. 169 ATLANTIC REPORTER, 94 SERIES
that this question is properly before us, we observe that the firmly established rule of this Court is to the contrary. "Where a plea of guilty is properly entered, as it was here, evidence to prove guilt is not required." Brown v. State, 1960, 223 Md. 401, 404, 164 A.2d 722, 724.
Judgments affirmed.
Zoning Commission of Howard County, No. 228.
Court of Appeals of Maryland, April 7, 1991.
The zoning commissioner of the county brought a suit against the occupants of realty to enjoin them from using the realty for a junk yard. The Circuit Court for Howard County, James Macgill, Jr., rendered a decree in favor of the zoning commissioner, and the occupants of the realty appealed. The Court of Appeals, Horsey, J., held that the evidence sustained the finding that use of the realty as a junk yard was not a vested nonconforming use on the critical date of zoning regulations and that the realty therefore could not be used as a junk yard.
Decree affirmed.
1. Zoning C-329
Whether nonconforming use can be enlarged or extended is ordinarily governed by local zoning ordinances and regulations.
2. Zoning C-329
Power to deny use of land as junk yard necessarily included power to prohibit ex-
tension or enlargement of nonconforming use of premises as such and to require store and used automobile lot so as to encompass added use as junk yard for junking and burning of automobiles.
3. Zoning C-329
Spirit underlying zoning regulations is to restrict rather than increase nonconforming uses.
4. Zoning C-329
Question what is extension or enlargement of nonconforming use is ordinarily one of fact, and determination in such case depends on its own facts.
5. Zoning C-331
More intensification of nonconforming use is permissible so long as nature of use is not substantially changed.
6. Zoning C-329
Right of landowner to continue same kind of nonconforming use does not confer on him right subsequently to change or add to use new and different use amounting to drastic enlargement or extension of prior existing use.
7. Zoning C-329
Extension of nonconforming use may be allowed where zoning regulations authorize it.
8. Zoning C-329
Ordinarily, change may not be made in nonconforming use of higher classification to one of lower classification.
9. Zoning C-788
Evidence sustained finding that use of property as junk yard was not vested nonconforming use on critical date of zoning regulations and that property therefore could not be used as junk yard.
10. Zoning C-790
Court of Appeals could not set aside decree prohibiting occupants of realty from

CLELAND v. MAYOR & CITY COUNCIL OF BALTIMORE
Cite as 84 A.2d 49
CLELAND et al. v. MAYOR & CITY COUNCIL OF BALTIMORE et al.
No. 30.
Court of Appeals of Maryland, Nov. 2, 1981.
Three practicing physicians and their wives, co-owners of certain property applied for a permit to establish a parking lot on their property to be used for parking automobiles belonging to physicians and members of their staff who were using the physicians' offices. The application was opposed by Joseph P. Cleland, trustee, and others. The building inspection engineer declined to grant the permit and an appeal was taken to the Board of Municipal and Zoning Appeals where the application was approved and the objectors appealed. The Mayor and City Council of Baltimore and others were named appellees. The Baltimore City Court, W. Conwell Smith, C. J., affirmed the action of the Board and the objectors appealed. The Court of Appeals, Marbury, C. J., held that exceptions to the Zoning Act are not a matter of right and as it appeared that nothing would be served by granting permit but convenience of physicians and their employees, Board was not justified in granting an exception.
Order reversed and case remanded.
1. Municipal Corporations C-60(115)
Baltimore ordinance giving mayor and city council authority to provide by ordinance, on conditions, for establishment of open areas in a residential use district for parking of automobiles, did not implicitly repeal provisions of zoning ordinance permitting board of municipal and zoning appeals to grant use of same classification, necessary or incidental to a nonconforming use existing in a residential use district, within 50 feet from such nonconforming use, and permitting board to grant within 100 feet of a boundary line between use districts any use permitted in that one of such use districts which has lower classification.
2. Municipal Corporations C-62(143)
Where counsel for applicant for permit to establish parking lot for physician and their employees on property where physicians' offices were located made unsworn statement of situation to board of municipal and zoning appeals, and two physicians were then called, who adopted counsel's statement, physicians were subject to cross-examination on any statements made by counsel, and method of procedure was not to be commended as a general proposition.
3. Municipal Corporations C-62(117)
Special exceptions to a zoning ordinance will never be granted to gratify mere convenience, there must be a necessity, and that necessity must be so urgent and the facts so extraordinary as to require withdrawal of that particular case from application of accepted rule.
4. Municipal Corporations C-60(123)
The spirit of the Baltimore zoning ordinance is against extension of nonconforming uses.
5. Municipal Corporations C-62(117)
Rule that special exception to city zoning ordinance will never be granted to gratify convenience, and not only must necessarily be urgent but facts in given case so extraordinary as to require withdrawal of case from application of accepted rule, applies to provision of Baltimore zoning ordinance authorizing board of municipal and zoning appeals to grant within 100 feet of a boundary line between two use districts any use permitted in that one of such use districts which has lower classification.
6. Municipal Corporations C-62(130)
Convenience of physicians and their employees did not warrant granting of exception to zoning ordinance by Baltimore board of municipal and zoning appeals of property owner's application for permit to establish on property where physicians' offices were located in residential use area of parking lot for automobiles of physicians and their employees, although there was a pre-existing nonconforming use of that portion of property permitting its use for physicians' offices.
Norman C. Melvin, Jr., and Douglas H. Gordon, both of Baltimore, for appellants.

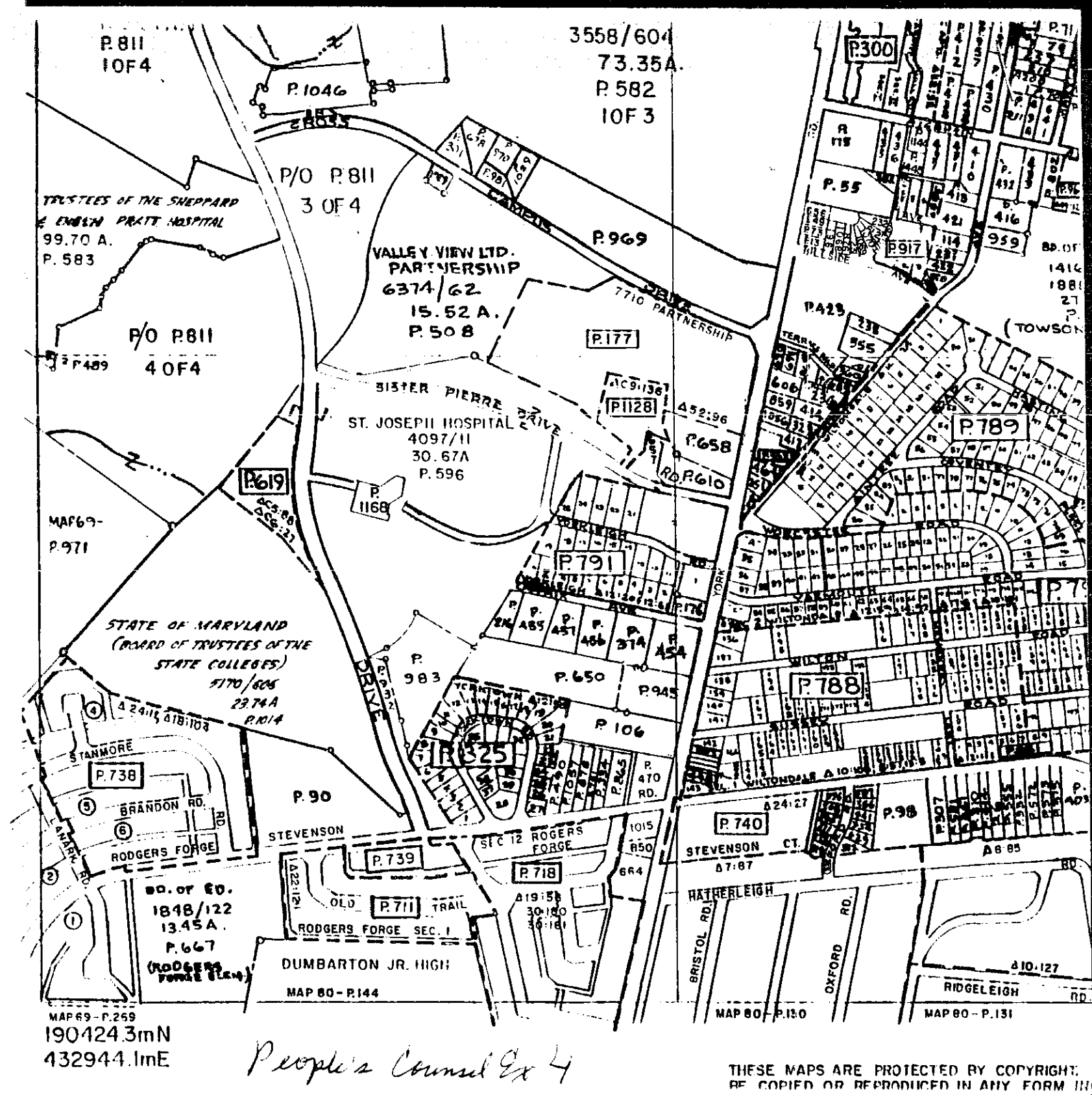
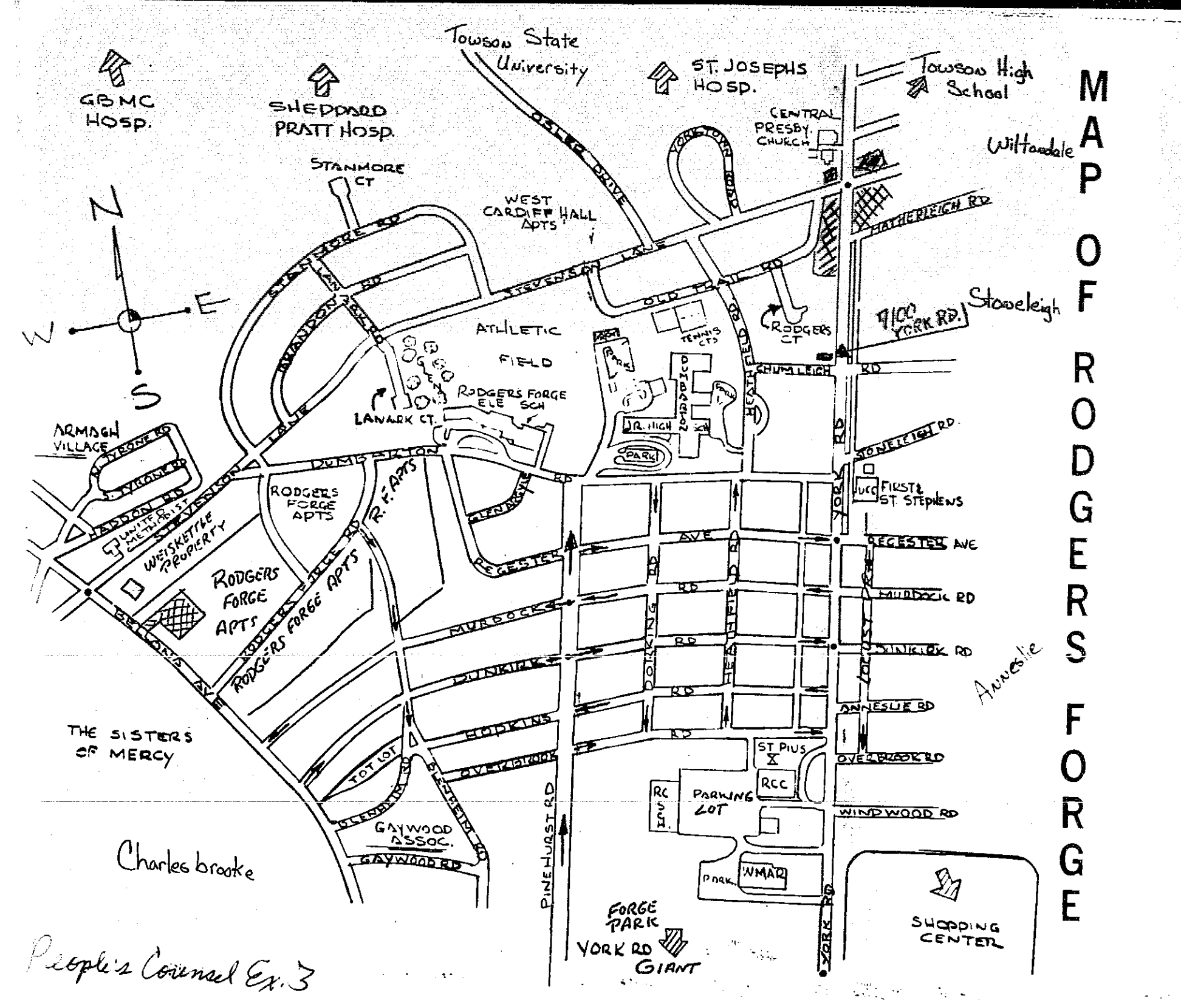
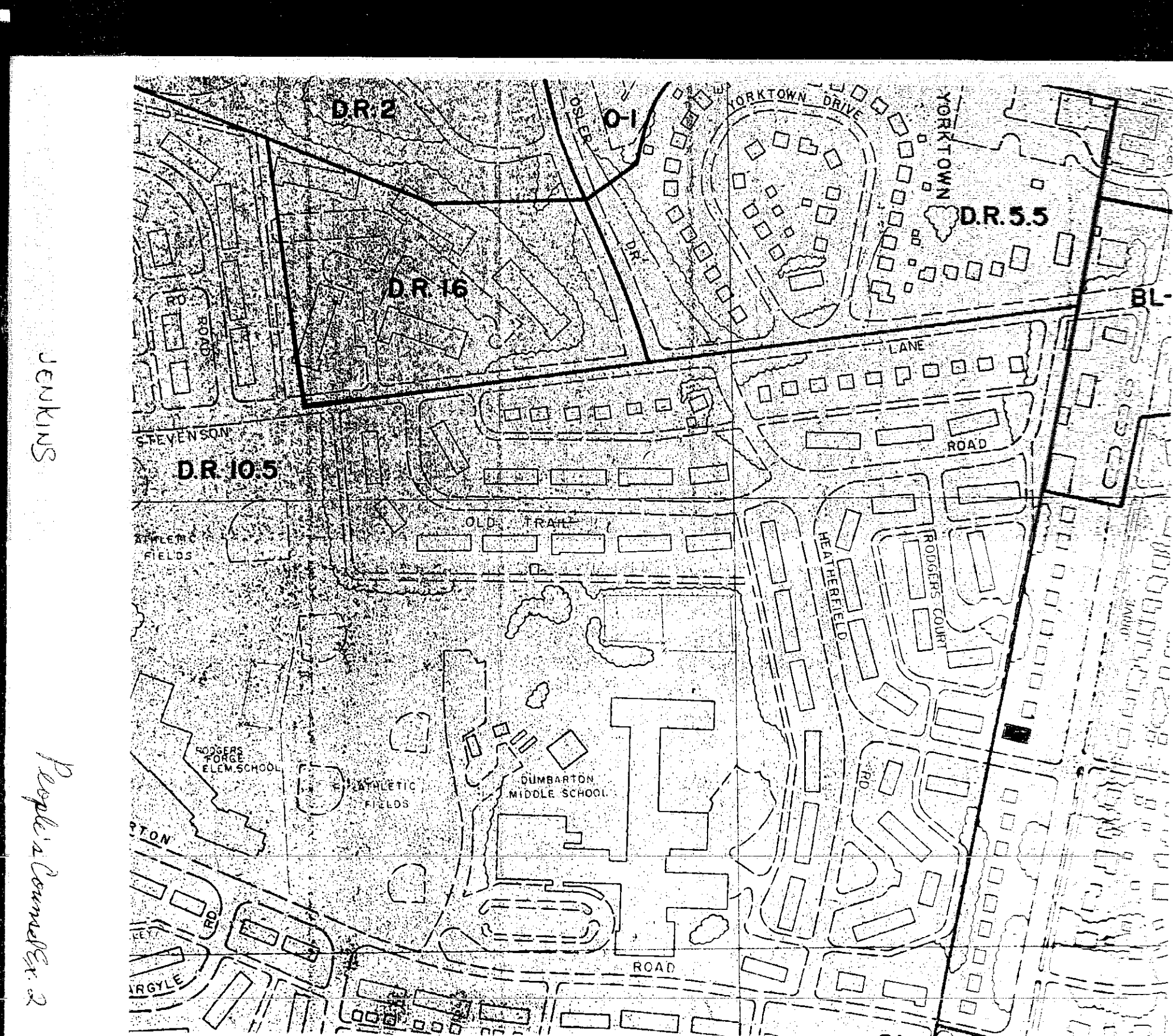
MAHLER v. BD. OF ADJUST. OF FAIR LAWN N.J. 511
Cite as 227 A.2d 511
94 N.J. Super. 173
Arthur F. MAHLER, Plaintiff-Respondent, v. THE BOARD OF ADJUSTMENT OF THE BOROUGH OF FAIR LAWN, and The Borough of Fair Lawn, Defendants-Appellants.
No. A-1339.
Superior Court of New Jersey Appellate Division.
Argued Jan. 9, 1997.
Decided March 9, 1997.
would sleep only on nights he had emergency calls.
2. Zoning C-490
To warrant a variance based upon the "general welfare" criterion of statute, the use of a smaller scope than institutional dimension should give board of adjustment and governing body called upon to approve recommendation of variance serious pause before allowing a variance justified only or primarily on special relationship between proposed use and promotion of general welfare. N.J.S.A. 40:55-39, subd. d.
3. Zoning C-490
Affirmative statutory requirement of special reasons for granting a variance is no less integral to case for variance than negative criteria of absence of special detriment to public good and impairment of zone scheme and plan. N.J.S.A. 40:55-39, subd. d.
4. Zoning C-610
Conclusive consideration in reviewing denial of zoning variance was that, whether or not variance could have been properly granted, there was no basis for judicial conclusion that it had acted arbitrarily, capriciously or unreasonably in exercising its discretionary quasi-judicial powers by denying such recommendation.
5. Zoning C-610
Board of adjustment did not act arbitrarily, capriciously or unreasonably in denying request of dentist, who had removed his family to another house and who could no longer practice dentistry in his first house under home occupation ordinance, that he be allowed a variance to continue his dental occupation in first house.
6. Zoning C-623
There is an area of special discretion reserved on local agencies within which, in many situations, either grant or denial of variance would be judicially sustained.

MAHLER v. BOARD OF ADJUSTMENT OF BOR. OF FAIR LAWN N.J. 705
Cite as 228 A.2d 705
more recently in terms of strict liability in tort. Henningsen v. Bloomfield Motors, Inc., supra, 32 N.J. at 406, 161 A.2d 69; Higbee v. Giant Food Shopping Center, Inc., 106 P.Supp. 586 (D.C.Va.1952); Vandermark v. Ford Motor Company, 61 Cal.2d 256, 37 Cal.Rptr. 896, 391 P.2d 168, 171-172 (1964); Graham v. Bottenfield's, Inc., 176 Kan. 68, 269 P.2d 413 (1954); McKisson v. Sales Affiliates, Inc., 416 S.W.2d 787 (Tex.Supp.1967); 2 Restatement, supra, comment f, p. 350; Harper & Jones, Torts, § 28.30, p. 1600 (1956). As Chief Justice Traynor noted in Vandermark, supra, retailers are engaged in the distribution of goods to the public. They select the manufacturer whose products they wish to sell, and thus they become part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products. Moreover, from a practical standpoint the strict liability of the dealer may move him to put pressure on the manufacturer to make the products safe.
(12,13) Strict liability to the injured consumer does not leave the dealer without remedy. He has an action over against the manufacturer who should bear the primary responsibility for putting defective products in the stream of trade. Considering the overall problem of prosecuting products liability cases, it would seem to make sense procedurally to have the plaintiff's cause of action whenever possible adjudicated in one action against manufacturer and retailer. If the plaintiff sues the dealer alone, the dealer in his own interest should implead the manufacturer and thus avoid circuit of action. Service of process on the manufacturer may present a problem occasionally. But here recourse may be had to the long-arm service rule, R. 4:4-4(c) (1), (e), with its obvious implications of liberal application. Its use may overcome the difficulty in most cases.
(14) Accordingly, in light of all of the above, and particularly the testimony of the plaintiffs' dermatologist attributing the

HOLZER & LEE
LAW OFFICE
J. CARROLL HOLZER, PA
THOMAS J. LEE
TOWSON, MD 21204
(410) 795-4556
FAX: (410) 823-4923
TOWSON OFFICE
305 WASHINGTON AVENUE
TOWSON, MD 21204
(410) 823-4556
FAX: (410) 823-4923
CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELLSBURGH, MD 21754
(410) 795-4556
FAX: (410) 795-5535
December 1, 1994
Arnold Jablon, Director
Zoning Administration and
Development Management
County Office Building
Chesapeake Ave.
Towson, Maryland, 21204
Re: Petition for Special Hearing
W/S York Rd. and Chumleigh Rd.
(7100) York Rd.
Mark Jenkins, et ux, Petitioners
Case No. 95-95- SPH
Dear Mr. Jablon:
On behalf of Rodgers Forge Community Association, Inc. and Honey Holston, individually, undersigned hereby notes an appeal to the County Board of Appeals from the decision of the Zoning Commissioner in the above referenced case decided on November 2, 1994.
Enclosed please find a check to cover the cost of the appeal.
Very truly yours,
J. Carroll Holzer
JCH:cig
cc: County Board of Appeals
People's Counsel for Baltimore County
RECEIVED
DEC 1 1994
ZADM

PLEASE PRINT CLEARLY
PETITIONER(S) SIGN-IN SHEET
NAME ADDRESS
Charles E. Jenkins 426 CHUMLEIGH RD
J. CARROLL HOLZER, PA 526 ANNESLEE RD.
Margaret A. Jenkins 818 HATHAWAY RD - 21112
Paul L. Jenkins 304 W. Pennsylvania Ave 17049
Mark P. Jenkins 526 ANNESLEE RD BALTIMORE 21212





MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION  
REAL PROPERTY SYSTEM  
BALTIMORE COUNTY

04/18/95

PRIMARY SCREEN

DISTRICT: 05 ACCT NO: 0904201420 SUBDIST:

OWNER NAME / MAILING ADDRESS  
JENKINS MARK P  
JENKINS ADRIENNE  
7100 YORK RD  
BALTIMORE MD 21212-1525

DEED REF 1) / 5639/ 23  
PLAT REF 1) 19/ 56

EXEMPT STATUS/CLASS  
0 000

PRINCIPAL RESIDENCE

PREMISE ADDRESS  
7100 YORK RD

TOWN GEO ADVAL TAX LAND SOLIDITY  
CODE CODE CODE CLASS USE LEE  
000 81 000 R 04

LEGAL DESCRIPTION  
MAP GRID PARCEL SUB-DIV PLAT SECT BLOCK LOT  
70 19 718 12 3 12

RODGERS FORGE  
TRANSFERRED FROM: DEARDORFF PHILIP C 06/02/76 \$85,000

PRICE: <F1> VALUES SCRN <F3> SELECT NEXT PROPERTY

VALUES SCREEN

DISTRICT: 05 ACCT NO: 0904201420 SUBDIST:

OWNER NAME: JENKINS MARK P TOWN CODE: 000

CURRENT VALUE PHASE-IN VALUE PHASE-IN ASSESSMENTS  
BASE VALUE AS OF AS OF AS OF AS OF  
01/01/93 07/01/93 07/01/94 07/01/95

LAND : 37,620 40,870  
TOTAL : 143,840 140,320  
TOTAL : 203,460 181,190 181,190 72,470 72,470

FREE LAND: 0 0 0 0 0

PRIMARY STRUCTURE DATA PARTIAL EXEMPT ASSESSMENTS  
YEAR BUILT ENCLOSED AREA CODE 07/01/94 07/01/95  
1958 2,784 SF COUNTY 000 0 0  
STATE 000 0 0  
MUNICIPAL 000 0 0

LAND AREA: 10,500,000 SF

PRICE: <F1> PRIMARY SCRN <F3> SELECT NEXT PROPERTY

MLSP (BC)103409 Zip: 21204 Map: BC27C10 List: -1- Residential  
7100 York Road Gr. Cap: \$0 Ground Rent: \$275,000  
Rogers Forge

Desc: Colonial 2 Levels Detached 2 Bedrooms 2/0 BATHS  
Age: Unknown Brick Home Asph Sh Roof

Rooms: Very Unique Property  
Floor: Formal LRoom Entry/Closet Formal Dr  
Ament: Wood Floors Shades Blinds Lgt Fixtures Built-Ins  
Incl Doc Ofc

Lwr Lvl: F/Part Imprv Central A/C 2+ Fireplace  
Heat: Fuel-Gas

Site: Corner Lot  
Lot: Full Lower Level  
Utils: Public Water Public Sewer Public Gas

Ann. Fees: TX: \$2,500

Show: Call Office Poss: Negot

Dir: This Property Has Been Used As A Dentist/Residence For 40+  
Remarks: Years And Is Best Suited For Professional Use. Purchaser To  
Live On Premises. Owner Will Hold A Substantial 2ND. 1st Fl  
1400 Sq Ft. 2ND Fl Living Same. C/L Scott Haupt 453-0010

DU: N BB: Y RB1: SU: SU1: SV: TL: BR  
LA: Dan Betscher PH: ( ) 821-6404 CO: 3.5  
BH: 6342 Long & Foster Real Estate PH: (410) 583-9400 MLS# (BC)103409

All information is deemed reliable but not guaranteed by the Broker or MARIT  
Copyright (C) 1994 By Mid-Atlantic Real Estate Information Technologies  
Run Date: 11/21/94

People's Counsel #6

# BALTIMORE COUNTY ZONING REGULATIONS

AS AMENDED THROUGH OCTOBER 10, 1974

1975 EDITION

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING  
TOWSON, MARYLAND

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND  
Legislative Session 1982, Legislative Day No. 15  
BILL NO. 105-82

Messrs. Hickernell & Huddles, Councilmen

By the County Council, June 21, 1982

A BILL  
ENTITLED

AN ACT concerning  
Zoning Regulations - Offices of Professional Persons

FOR the purpose of  
authorizing offices or studios of certain professional persons as a matter of right  
as an accessory use in the person's domicile primary residence in the R.C. zones of  
the County, subject to certain restrictions; authorizing such offices or studios in  
certain R.C. zones of the County as a matter of right, subject to certain restrictions;  
in the R.C. Zones of the County by special exception, subject to certain restrictions;  
repealing the authorization for such offices or studios as a matter of right in the  
D.R. Zones of the County; and authorizing such offices or studios by special exception  
in certain D.R. zones of the County, subject to certain restrictions.

BY repealing and re-enacting, with amendments,  
Paragraphs 7.d., 10.d., 6.d., 11.d., and 14.e. of Subsections  
1A01.2.B., 1A02.2.A., 1A03.3.A., 1A04.2.A., and 1B01.1.A., respectively  
Baltimore County Zoning Regulations, as amended

BY adding  
Paragraphs 12A, 16A, 7B and 10A  
Subsections 1A01.2.C., 1A02.2.B., 1A03.3.B. and 1A04.2.B., respectively,  
Baltimore County Zoning Regulations, as amended

BY repealing  
Paragraph 14.e.  
Subsection 1A01.1.A.  
Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report from the  
Planning Board concerning the subject legislation and has held a public hearing  
thereon, now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND,  
1. MARYLAND, that Paragraphs 7.d., 10.d., 6.d., and 11.d., and 14.e. of Subsections  
2. 1A01.2.B., 1A02.2.A., 1A03.3.A., and 1A04.2.A. and 1B01.1.A., respectively, of the  
3. Baltimore County Zoning Regulations, as amended, be and they are hereby repealed  
4. and re-enacted, with amendments, to read as follows:  
5. Section 1A01.2.C. 2 (AGRICULTURAL) ZONES  
6. 1A01.2.B.  
7.

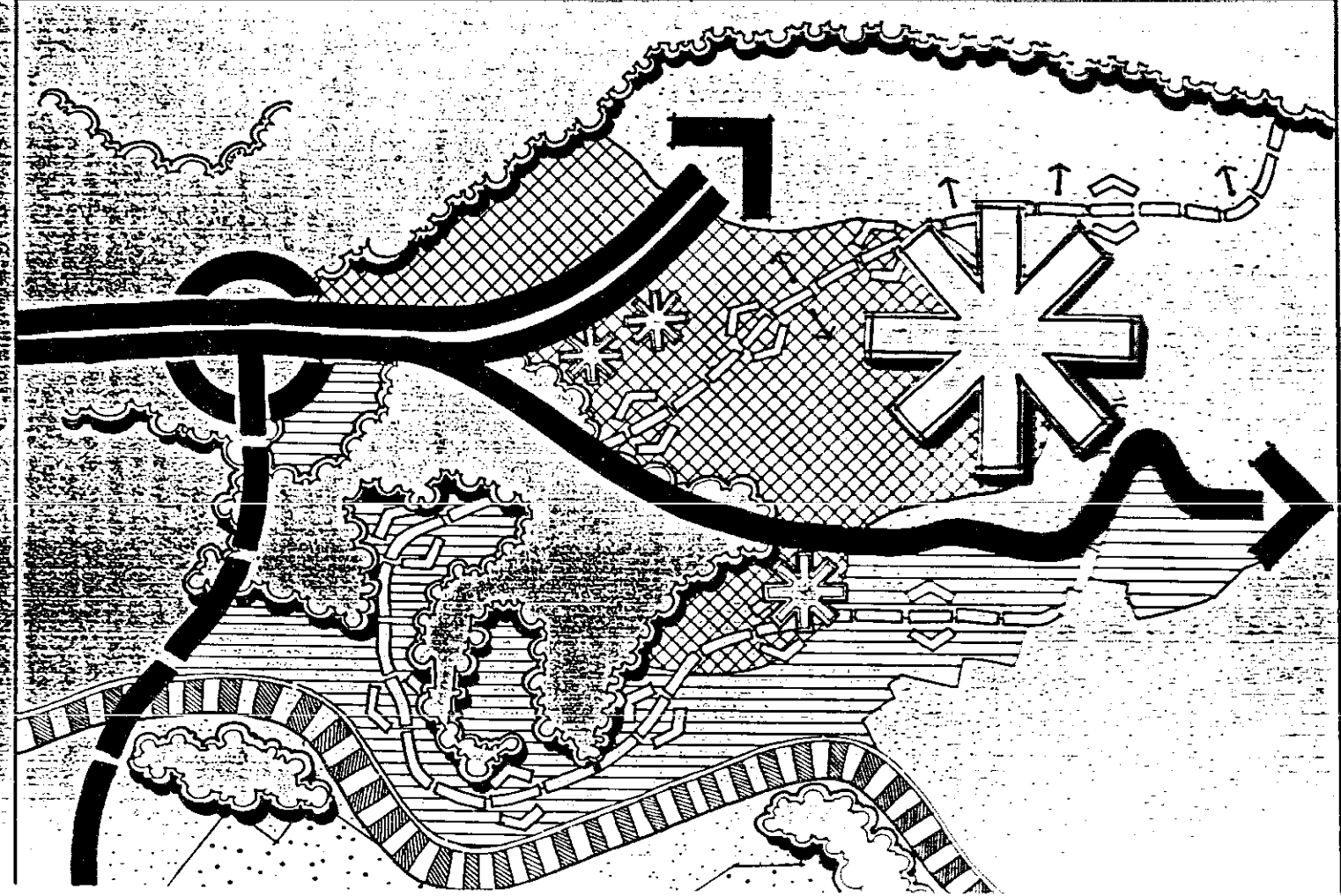
EXPLANATIONS: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[brackets] indicate matter stricken from existing law.  
Strike-out indicates matter stricken from bill.  
Underlining indicates amendments to bill.

People's Counsel #6



# Master Plan

Baltimore County 1989-2000



People's Council #10

## AFFIDAVIT

STATE OF MARYLAND  
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) (Zoning Committee) of the Rodgers Forge Community Association.

also members are: Donald Gendy and Lizette Hovison

ATTEST: RFCa Association

Secretary H. Holton President

DATE: April 21, 1995

a

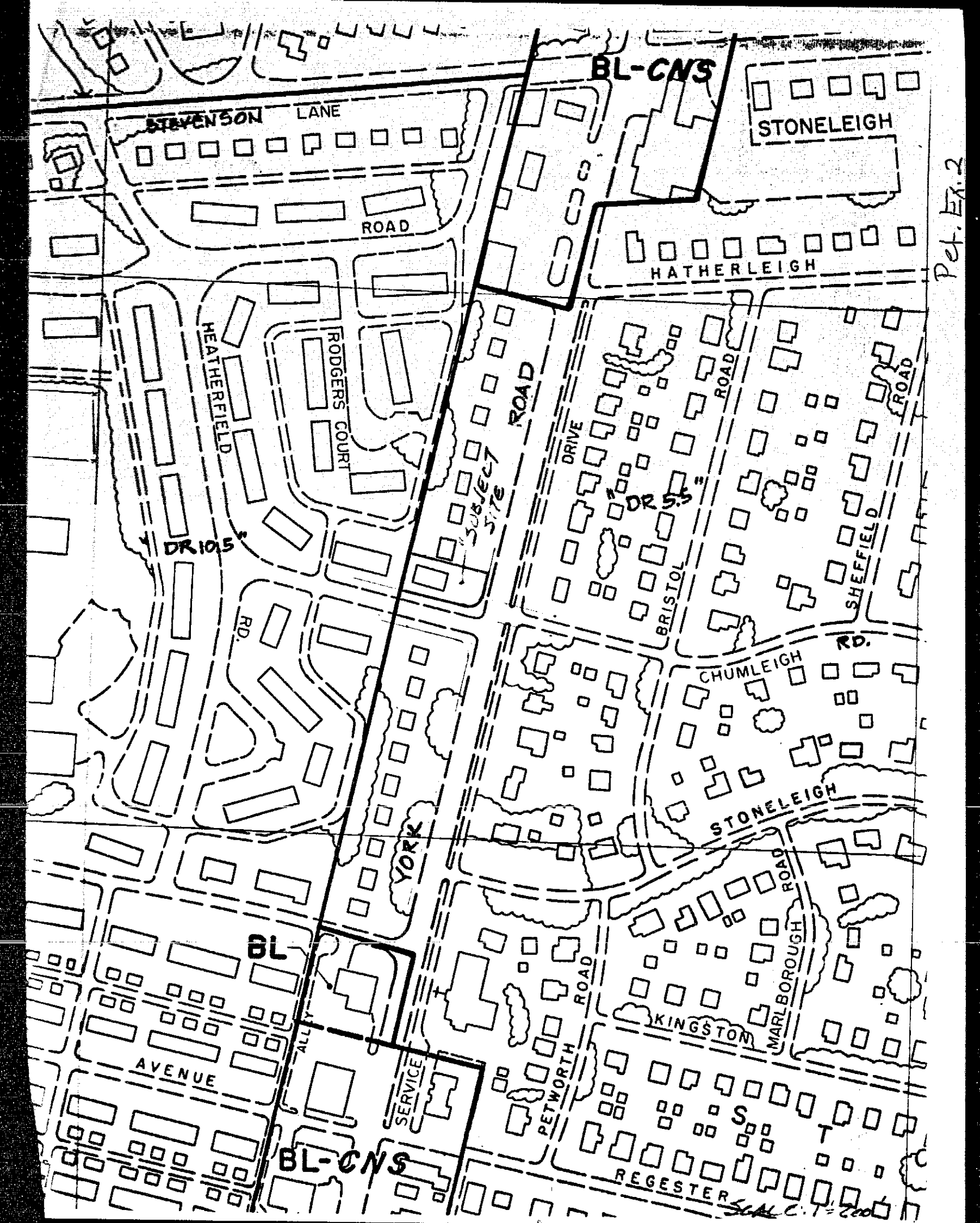
## ORIGINAL

1 IN THE MATTER OF THE \* BEFORE THE  
2 APPLICATION OF \* COUNTY BOARD OF APPEALS  
3 MARK P. JENKINS, et ux \* OF BALTIMORE COUNTY  
4 for special hearing on \* Case No. 95-95-SPH  
5 property located on the \* April 27, 1995  
6 west side of York Road \*  
7 and Chumleigh Avenue \*  
8 (7100 York Road) \*

9 \* \* \* \* \*  
10 The above-entitled matter came on for hearing  
11 before the County Board of Appeals of Baltimore County at  
12 the Old Courthouse, 400 Washington Avenue, Towson,  
13 Maryland 21204 at 10 o'clock a.m., April 27, 1995.  
14 \* \* \* \* \*

15  
16  
17  
18  
19  
20 Reported by:  
21 C.E. Peatt

BALTIMORE COUNTY BOARD OF APPEALS - original transcript -



## BALTIMORE COUNTY ZONING REGULATIONS

Adopted  
March 30, 1955

in accordance with Title 30, Section 532(c) of the  
Code of Public Local Laws of Baltimore County, (1955  
Edition), with subsequent amendments through De-  
cember, 1963.

First edition 1955  
Second edition 1964

### DEFINITIONS

Family: Any number of individuals lawfully liv-  
ing together as a single housekeeping unit and doing  
their cooking on the premises, as distinguished from  
a group occupying a boarding or rooming house or  
hotel.

Farmer's Roadside Stand: An accessory struc-  
ture for the sale of articles grown or produced on  
the premises.

Farming: Commercial agricultural uses in gen-  
eral, and specifically crop, dairy, stock, and poultry  
farming; commercial greenhouses on three acres or  
more.

Floor Area Ratio (F.A.R.): The ratio of the total  
aggregate of all floor area of a building for buildings,  
if more than one principal building occurs on a site)  
to its net site area (exclusive of street rights-of-way).  
Total floor area shall include outside walls, floor  
areas of basements and of all accessory buildings,  
including garages and sheds, and covered areas, in-  
cluding open porches, breezeways and carports. Both  
the height of any building and its amount of cover-  
age of the land by such building may be expressed  
with one figure. An F.A.R. of 1.0 can mean 100%  
coverage of the net land by a one-story building,  
50% coverage by a two story building, 25% coverage  
by a four-story building, etc.

Garage, Community: A structure or series of  
structures for the storage of automobiles of residents  
of the neighborhood, and not used for making re-  
pairs.

Garage, Residential: An accessory building,  
portion of a main building, or building attached  
thereto, used for storage of private motor vehicles,  
only one of which may be a commercial vehicle.

Garage, Service: A garage, other than a resi-  
dential garage, where motor-driven vehicles are  
stored, equipped for operation, repaired, or kept for  
remuneration, hire or sale.

Home Occupation: Any use conducted entirely  
within a dwelling which is incidental to the main use  
of the building for dwelling purposes and does not

We, the undersigned, understand that there is an upcoming zoning  
hearing for case #95 95 SPH. This hearing held before the  
Baltimore County Board of Appeals concerns the property located  
at 7100 York Road.

Our signatures express our support for the Drs.' Jenkins  
continued use of this property for the practice of dentistry.  
We consider their practice to be an asset and a service to the  
community.

We do not consider their practice to be an intrusion into our  
residential community nor do we see any harm to the health,  
safety, or welfare of the community.

NAME	ADDRESS	ZIP CODE
Cris Cowington	423 Dumbarton Rd	21212
Sam Patel	318 Midway Rd	21212
Thomas Plinson	7207 Orsted Ct	21222
John P. Bateman	6901 PETWORTH RD	21202
Gene Plough	327 Hopkins Rd	21212
Lisa Cowington	423 Dumbarton Rd	21212
Sharon Plinson	9749 Dunham Park Ct	21046
Karen Plinson	413 Dumbarton Rd	21212
John Jenkins	38 Hickory Meadow Rd	21030
Elizabeth Jenkins	25 Hickory Meadow Rd	21030
George M. Plinson	413 Dumbarton Rd	21212
Ann Strickland	7100 BRISTOL ROAD	21212

Is the Baltimore County  
Board of Appeals

Baltimore -  
For thirty-two years we have  
been going to this location for our  
dental work. No one to our  
knowledge has ever complained about  
a dentist being at the above said  
location.

It is easily accessible for people  
in the neighborhood, especially the  
elderly, to come there for treatment.

We can see no reason why  
we should have to move.

Yours truly,  
Mr. & Mrs. John C. Diering

Mr. & Mrs. John C. Diering  
419 Chumleigh Rd.  
Baltimore, MD 21212

Pet. Ex. 7B

Mrs. Theodore M. Kremer  
424 Chumleigh Road  
Baltimore, Maryland 21212

January 16, 1995.

Dear Mr. Holton,

As a resident of Chumleigh Rd. in  
Rosedale, I would like to express my  
support of whatever measures are appropriate  
to permit the dentist office of Drs. Mark  
and Adrienne Jenkins to continue their  
practice at their present location. They  
are good neighbors and I have never  
been bothered by their patients' parking  
or causing any disturbance in the  
neighborhood. I live two houses from  
the Dentist Office.

Drs. Mark and Adrienne Jenkins  
maintain their property in good condition  
and contribute to the quality of the  
neighborhood.

I hope that a variance can  
be granted by Baltimore County to  
permit them to continue their practice  
in Rodgers Forge without residing at  
the location of their office. I see  
no problem to our community by  
their staying.

Sincerely,  
Louise P. Kremer.

## ZONING REGULATIONS AND RESTRICTIONS

FOR

BALTIMORE COUNTY

2/2/45 - 7/2/53  
Inc. Amendments  
7/2/53 - 3/30/55

Pet. Ex. 4



Ret. Ex. 7C

April 26, 1995

To Whom it may concern:  
The office of Mark and Adrienne Jenkins has been a blessing for me as far as it is for me of their patients. It is very helpful to have that there is an office in the neighborhood that is so convenient for all concerned.  
I cannot imagine a better job of a realtor. I have certainly no disturbance around the office at any time.  
I sincerely hope the matter will be settled soon to their advantage. We need this!  
Mark and Adrienne have very willingly given me the transportation and service. There are no more have meant much to me - and many others in the area.  
These young professionals are important to the area, and because of the opportunity to continue their practice at their present location. They are a credit to the neighborhood - Not a detriment!

Very truly yours,  
(Mrs) Rosalee Thront  
318 Sherman St

Ret. Ex. 7D

Richard W. Rochfort  
6031 Bellona Avenue  
Baltimore, Maryland 21212-2923  
410-435-3333 Fax 410-435-7311

Wednesday, April 26, 1995

To Whom It May Concern:

I have lived in the Rogers Forge area for over 40 years. Most of this time was spent in my family's home directly across the street from Dr. Jenkins' office. During this time I have observed that the office is a stable, positive influence on the community. The Jenkins' and the Deardorffs before them have always acted in the best interest of the community. They have served the community in an exemplary way and, to my knowledge, have never caused a conflict of any kind.

I have observed patients coming and going from this office and have never had any cause for concern about parking or overcrowding. In fact, my mother who still lives in our family home across the street has benefited in the past from the convenience of Dr. Jenkins' office.

I believe that the loss of Dr. Jenkins' service will be a disservice to this community; furthermore, a stable tenant in the building is a positive influence and Dr. Jenkins is apparently perfectly capable of managing this.

Sincerely,

Dick Rochfort  
Dick Rochfort

Duplicate

OF  
CBA'S  
P.E. #4  
(Sent to  
CST)

KEEP!  
Do NOT LOAN OUT

See seat #

## ZONING REGULATIONS AND RESTRICTIONS

FOR

BALTIMORE COUNTY

2/2/45 - 7/2/53  
Inc. Amendments  
7/2/53 - 3/30/55

PETITIONER'S  
EXHIBIT No. 2

BALTIMORE COUNTY  
ZONING REGULATIONS

Adopted  
March 30, 1955

In accordance with Title 30, Section 532(d) of the Code of Public Local Laws of Baltimore County, (1955 Edition), with subsequent amendments through December, 1963.

DEFINITIONS

Family: Any number of individuals lawfully living together as a single housekeeping unit and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel.

Farmer's Roadside Stand: An accessory structure for the sale of articles grown or produced on the premises.

Farming: Commercial agricultural uses in general, and specifically crop, dairy, stock, and poultry farming; commercial greenhouses on three acres or more.

Floor Area Ratio (F.A.R.): The ratio of the total aggregate of all floor area of a building (or buildings, if more than one principal building occurs on a site) to its net site area (exclusive of street right-of-way). Total floor area shall include outside walls, floor areas of basements and of all accessory buildings, including garages and sheds, and covered areas, including open porches, breezeways and carports. Both the height of any building and its amount of coverage of the land by such building may be expressed with one figure. An F.A.R. of 1.0 can mean 100% coverage of the net land by a one-story building, 50% coverage by a two-story building, 25% coverage by a four-story building, etc.

Garage, Community: A structure or series of structures for the storage of automobiles of residents of the neighborhood, and not used for making repairs.

Garage, Residential: An accessory building, portion of a main building, or building attached thereto, used for storage of private motor vehicles, only one of which may be a commercial vehicle.

Garage, Service: A garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired, or kept for remuneration, hire or sale.

Home Occupation: Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not

PETITIONER'S  
EXHIBIT No. 3

DEED - FREE RELEASE - INDIVIDUAL GRANTEE - LOAN FORM  
112 3909

This Deed, MAKE THIS

In the year one thousand nine hundred and seventy-six

of Baltimore County, State of Maryland, of the first part, and MARK P. JENKINS and ADRIENNE JENKINS, his wife, of County and State of Maryland, of the second part.

WITNESSETH, That in consideration of the sum of five dollars and other good and valuable considerations, the receipt of which is hereby acknowledged, the said party of the first part

do hereby grant and convey to the said parties of the second part, as tenants by the entirety, their assigns and the survivor of them and the survivor's

personal representative, XXXXXXXX and assigns, in fee simple, all that lot of ground situate in Baltimore County and described as follows, that is to say:

RESERVING for the name at the intersection formed by the west side of York Road and the north side of Chumleigh Road, coordinates of said intersection being north 308.99.09 and east 2195.12 as shown on the plat entitled "Section 12, Rodgers Forge" dated July 1953 and recorded among the Deeds Records of Baltimore County in Liber D.L.B. No. 19 - folio 56; running thence and binding on the said west side of York Road north 11 degrees 50 minutes east 54.00 feet, thence along the said west side of York Road the following two courses and distances: viz: north 78 degrees 00 minutes west 120.00 feet and south 11 degrees 32 minutes west 72.00 feet to the aforementioned north side of Chumleigh Road; the following two courses and distances: viz: first north 78 degrees 00 minutes east 120.00 feet and second along a curve to the left having a radius of 23.00 feet for a arc distance of 27.25 feet said curve being subtended by a chord bearing north 26 degrees 20 minutes west 25.36 feet, to the place of beginning. The improvements thereon being known as No. 7100 York Road - being subject, however, to a 10 feet right-of-way along the third or south 11 degrees 32 minutes west 72.00 foot line for the installation and maintenance of utilities.

Said lot designated as Lot 10 Block 3 as shown on the aforementioned plat of Rodgers Forge. BEING the same lot of ground described in a Deed of Assignment dated July 11, 1950 and recorded among the Land Records of Baltimore County in Liber D.L.B. No. 2971, folio 22, which was granted and conveyed by Judith P. Ritchey unto Philip Calvin Deardorff.

BEING also the same lot of ground described in a Deed of Reversion dated March 9, 1962 and recorded among the Land Records of Baltimore County in Liber D.L.B. No. 2976, folio 97, which was granted and conveyed by Lett C. Thomsen and Elizabeth C. Thomsen, his wife, unto Philip Calvin Deardorff.

PETITIONER'S  
EXHIBIT No. 6

To Whom It May Concern;

I understand that there is an upcoming zoning hearing involving the dental practice of Drs. Mark and Adrienne Jenkins. The practice is located at 7100 York Rd. case #9595SPH. By my signature undersigned, I express my support for the Jenkins' practice. I consider it to be an asset to the community, and in no way adversely impacts on the community.

Thank You.

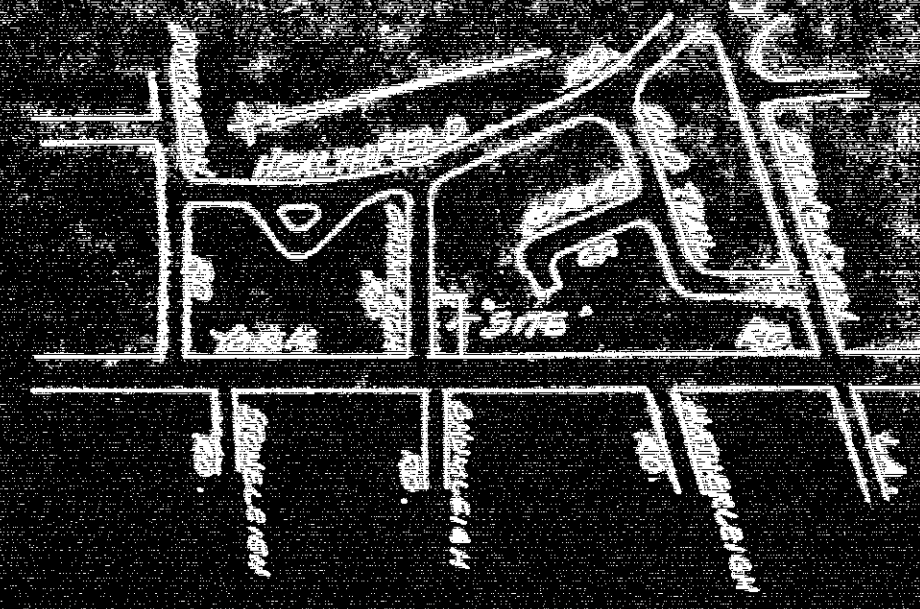
Elizabeth Diving  
John L. Diving  
C McDonald  
Judith A. Anderson  
887-4307  
Steven Offenberg  
321-0935  
Myrtle Biese  
Festie Biese  
Ruth Biese  
Edward C. Perry  
322-5700  
Hawley Pelt  
583-0604  
Ernest C. Schamehorn  
Jeff O. Calkin  
371-4015  
Thomas P. Offenberg  
821-0597  
Marie L. Biese  
Elizabeth S. Mc Shea

Stephen LAIKEN  
TEL 239-3875  
Caitlin Ann  
Karyn Kaufman  
TEL 371-6157  
Daron Paul  
M. Anna Comedien  
341-4381  
Susan Lowwood  
529-5850  
Joseph Trill  
665-5331  
Janna Manna  
813-0140  
Ed Butler  
Anthony Sitaras  
Carmie Butts



SECTION No 12  
"RODGERS FORGE"  
GLB 19-56

EX. ZONING: DR 10.5  
EX. USE: RESIDENTIAL



LOCATION PLAN  
SCALE: 1"=500'

GENERAL NOTES

1. AREA OF PROPERTY - 10,360 SF (GROSS = 16,060 SF)
2. EXISTING ZONING OF PROPERTY - DR 5.5
3. EXISTING USE OF PROPERTY - RESIDENCE & DENTIST OFFICE
4. PROPOSED ZONING OF PROPERTY - DR 5.5
5. PROPOSED USE OF PROPERTY - RESIDENCE & DENTIST OFFICE
6. PETITIONER REQUESTING A SPECIAL HEARING TO DETERMINE THE NON-CONFORMING STATUS FOR A DENTIST OFFICE IN A RESIDENCE IN A DR 5.5 ZONE
7. EXISTING 2 STY DWELLING  
1ST FLOOR - DENTIST OFFICE - 1414.5 SF  
2ND FLOOR - RESIDENTIAL  
BASEMENT - STORAGE
8. EXISTING PARKING REQUIRED - 0
9. PARKING SPACES PROVIDED - 0
10. PUBLIC UTILITIES EXISTING TO SITE

95-95-SPH

PLAT TO ACCOMPANY PETITION  
FOR

SPECIAL HEARING

# 7100 YORK ROAD

ELECT. DIST. 954 BALTIMORE CO., MD.  
SCALE: 1"=30' JULY 22, 1994

# 96

EXHIBIT No 1

PAUL LEE ENGINEERING, INC.  
304 W. PENNSYLVANIA AVE.  
TOWSON, MARYLAND 21204



34-024

future =  
DR 5.5-45  
(photo use 95-95-SPH)  
Petitioner  
DR 5.5







BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.  
MARTINSBURG, W.V. 25401

SCALE  
1" = 200' ±  
DATE  
OF  
PHOTOGRAPHY  
JANUARY  
1986

LOCATION  
STONELEIGH  
ANNESLIE  
ROGERS FORGE

SHEET  
N.E.  
8-A

PC  
Ech 11



5. Home Occupations, provided that no sign or signs shall be displayed on the lot so used exceeding a total of two square feet in area, not projecting more than one foot beyond the building, and not illuminated.

6. Professional Office when situated in the building used as a practitioner as his or her private dwelling, provided that no name plate shall be displayed exceeding two square feet in area. (emphasis supplied).

The appellants do not argue that their use of the property as a residential rental property and dentist office is permitted under post-1955 Baltimore County Zoning Regulations (B.C.Z.R.).

The appellees argued before both the Board and the Circuit Court that that when the appellants began using the building as a dental office and a rental property, as opposed to a dental office and their primary dwelling, the appellants were engaging in a use not permitted under either the pre-1955 or post-1955 version of the B.C.Z.R. The Circuit Court for Baltimore County, in an eight-page opinion, agreed with the appellees and reversed the decision of the Board. The Circuit Court set forth its holding as follows:

The Baltimore County Board of Appeals erroneously applied the law to the facts in this case. The appellees present use of 7100 York Road is not a legal, non-conforming use of a residential property under either the pre or post 1955 regulations regardless of the property's classifications as a home occupation or a professional office. The pre and post 1955 regulations require that the practitioner reside and practice in the same building for either a home occupation or a professional office. Appellees do not reside and practice in the same building. The decision of the Board is reversed. (emphasis supplied).

supplied).

Initially, we fail to see how the appellants' argument concerning the permissibility of the use of their property as a residential rental property and dental office is bolstered by applying the pre-1955 B.C.Z.R. versus the post-1955 B.C.Z.R. Indeed, the appellants only argument as to the tactical benefit of using the pre-1955 B.C.Z.R. is as follows:

The post-1955 B.C.Z.R. definition of professional office use requires the professional office be "situated in the same dwelling used by any of the foregoing persons as his residence." The B.C.Z.R.'s choice of private dwelling in the pre-1955 zoning regulations versus residence is telling as the former indicates a requirement of ownership as opposed to the later which requires that the practitioner reside on the subject property. (emphasis in original)

We are unpersuaded by this argument. The pre-1955 and post-1955 B.C.Z.R.'s uses of "private dwelling" versus "residence" constitute a distinction without a difference.

Nevertheless, assuming arguendo that the appellants are correct that the pre-1955 B.C.Z.R. applies, we agree with the Circuit Court and hold that the appellants' current use of the property is not permitted as a professional office or a home office. The Board simply misapplied the law when it concluded that the appellants' use of the property was permitted as long as the owner of the property operated the dental office. Indeed, the clear language of the regulation requires the appellants to utilize the property as their private dwelling in order for their use of part of the property as a dental office to be permitted as either

a home occupation or a professional office. Moreover, as even the appellants concede, this requirement was imposed by the post-1955 version of the B.S.Z.R.' Accordingly, in that the Board reached an erroneous conclusion of law, we affirm the decision of the Circuit Court. See People's Counsel v. Maryland Marine Manufacturing Co., Inc., 316 Md. 491, 496-7 (1989); Kassab v. Burkhardt, 34 Md. App. 699, 704 (1977).

JUDGMENT AFFIRMED;  
COSTS TO BE PAID BY APPELLANTS.

1. The 1955 B.C.Z.R. changed the "A" zone to the R-6 zone, and in Article II, section 209.1 established that the uses permitted in the R-6 zone were controlled by those uses permitted in R-40 zones. Under section 200.7-8, which concerns the R-40 zone, the following is provided, in part:

Offices of a doctor or dentist but with no hospital facilities, and offices or studios of a lawyer . . . when these or offices of similar professions are situated in the same dwelling used by any of the foregoing persons as his residence. Not more than 25% of the floor area of the dwelling shall be used for offices or studios. . . .

CIRCUIT COURT FOR BALTIMORE COUNTY  
Suzanne Mench  
Clerk of the Circuit Court  
County Courts Building  
401 Bosley Avenue  
P.O. Box 6754  
Towson, MD 21285-6754  
(410)-887-2601, TTY for Deaf: (800)-735-2258

Case Number: 03-C-95-005091

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
400 Washington Ave  
Rm 49  
Towson, MD 21204

95-95-SPH /Mark Jenkins  
reissued Order  
day appellate period  
ends from 9/12/96 -Howe, J.

IN THE MATTER OF  
APPLICATION OF MARK JENKINS,  
ET UX, FOR SPECIAL HEARING  
ON PROPERTY LOCATED ON WEST  
SIDE OF YORK ROAD AND  
CHUMLEIGH AVENUE  
(7100 York Road) CBA Case  
Number 95-95-SPH

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No.: 3-C-955091

# ORDER

It is hereby ORDERED this 9th day of September, 1996, that Mark and Adrienne Jenkins' Motion to Vacate Judgment entered by the Court on July 31, 1996 be and is hereby granted; and it is

FURTHER ORDERED that the Court's judgment entered in the above-captioned case on July 31, 1996 is hereby vacated; and it is

FURTHER ORDERED that the Court's judgment of the above-captioned case be reissued as of the date of execution of the date of entry of this Order.

*Barbara Kerr Howe*  
BARBARA KERR HOWE  
Baltimore County Administrative Judge

True Copy For  
SUZANNE MENCH, Clerk  
Per *[Signature]*  
Assistant Clerk

FILED SEP 12 1996

95-95-SPH /Mark P. Jenkins, et ux  
CBA REVERSES CBA  
(7/31/96 -Barbara Kerr Howe, J.)

IN THE MATTER OF  
APPLICATION OF  
MARK P. JENKINS, ET UX,  
FOR SPECIAL HEARING ON  
PROPERTY LOCATED WEST SIDE  
OF YORK ROAD AND CHUMLEIGH  
AVENUE (7100 YORK ROAD)  
CBA No.: 95-95-SPH

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No.: 0003-C-95-5091

# STATEMENT OF THE FACTS

Drs. Mark P. and Adrienne Jenkins (appellees) purchased the property in the Rodgers Forge community at 7100 York Road in 1976 from the previous owner, Dr. Dierdorf (sic). Dr. Dierdorf purchased the home sometime in the early 1950's and from that time his residence was on the second floor and his dental office was on the first floor. Appellees continued that arrangement until 1988. At that time, the second floor was no longer sufficient for appellees residential needs and they moved to a neighboring community. Appellees presently maintain the 7100 York Road property as a first floor dental office and a second floor residential rental unit.

Since the Jenkins no longer reside at the property, the Rodgers Forge Community Association became concerned that the property was no longer in conformance with zoning regulations. The regulations state that home occupations or professional

offices are permitted in certain residential zones if the owner of the business or practice resides at the property.

# PROCEDURAL HISTORY

On September 8, 1994, the Jenkins filed a Petition for Special Hearing seeking non-conforming use status for their dental office. The Zoning Commissioner of Baltimore County, in his November 2, 1994 decision, declared the dental office a legal, non-conforming use of a property in a D.R. 5.5 (residential) zone. The Commissioner found that the property was in an "A" residential zone when Dr. Dierdorf (sic) opened his office and was in compliance with all regulations in effect at that time. In addressing the fact that the Jenkins no longer reside and practice in the same building, the Commissioner stated that he was "satisfied that the spirit and intent of the ordinance w[ould] be observed if the Petition . . . is approved." (Commissioner's opinion at p.6)

Representatives of the Community Association and the People's Counsel appealed the Commissioner's decision to the County Board of Appeals of Baltimore County (Board). On May 31, 1995, the Board affirmed the Commissioner's decision which granted non-conforming use status. People's Counsel and the Community Association appealed this decision to the Circuit Court

for Baltimore County on June 19, 1995. A hearing was held before the Honorable Barbara Kerr Howe on February 20, 1996.

# ISSUES PRESENTED

1. Whether the Board applied erroneous conclusions of law.
2. Whether the appellees present use of the property is a legal, non-conforming use.
3. Whether the pre or post 1955 zoning regulations should be used in order to determine question two; and whether the use of the property is a home occupation or a professional office.

# HOLDING

The Baltimore County Board of Appeals erroneously applied the law to the facts in this case. The appellees present use of 7100 York Road is not a legal, non-conforming use of a residential property under either the pre or post 1955 zoning regulations regardless of the property's classification as a home occupation or a professional office. The pre and post 1955 regulations require that the practitioner reside and practice in the same building for either a home occupation or a professional office. Appellees do not reside and practice in the same building. The decision of the Board is reversed.

# DISCUSSION

## ISSUE #1-STANDARD OF REVIEW

The decision of the Board may be reversed if there was an

FILED JUL 31 1996



erroneous conclusion of law. People's Counsel v. Maryland Marine Manufacturing Co., Inc., 316 Md. 491, 496-7 (1989), Anne Arundel County v. 2020c West St., 104 Md.App. 320, 326-7 (1995). The various zoning regulations that could apply in this case all require that a practitioner reside and practice in the same dwelling unit. Since the fact that neither of the appellees reside in the building where they practice is undisputed, appellees are in clear violation of any and all relevant zoning regulations. This fact may not be overlooked simply because the appearance of the property has not changed.

#### ISSUE #2- NON-CONFORMING USE STATUS

The current Baltimore County Zoning Regulations (B.C.Z.R.) defines a non-conforming use as:

A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use. (Sec. 101).

In the case of Phillips v. Zoning Commissioner, 235 Md. 111, 113-110, 169 A.2d 410 (1961), the court states that "the spirit underlying zoning regulations is to restrict rather than increase nonconforming uses." In Jahnigen v. Staley, 245 Md. 131, 138-225 A.2d 277 (1967), the Court of appeals states:

The right of a landowner to continue the same kind of

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use to which the property was devoted on the critical date does not confer on him the right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use.

In the present case, appellee's subsequently changed their use of the building at 7100 York Road in 1988 when they began using the building as a dental office and a rental property and not as their primary dwelling. Since the appellees do not reside at 7100 York Road, the use of the property is not a legal non-conforming use under the current B.C.Z.R. and the use is not grandfathered under either the pre or post 1955 regulations.

#### ISSUE #3- PRE OR POST 1955 REGULATIONS; HOME OCCUPATION OR PROFESSIONAL OFFICE

Throughout the record of this case, no exact date is given for when Dr. Dierdorf first opened his dental office. The testimony states that it was sometime in the early 1950's.

Assuming this to be true, the property would be subject to the pre-1955 regulations for an "A" residence zone. Section III of the pre-1955 B.C.Z.R., in part, stated:

- A. Use Regulations: In any "A" Residence Zone, except as hereinafter expressly provided, no building or land shall be used and no building or structure shall be hereafter erected, altered, repaired or used except for one or more of the following uses:
5. Home Occupations, provided that no sign or signs shall be displayed on the lot so used exceeding a total of two square feet in area, not projecting

5

- more than one foot beyond the building, and not illuminated.
6. Professional office when situated in the building used by practitioner as his or her private dwelling, provided that no name plate shall be displayed exceeding two square feet in area. (Petitioner's exhibit #4.)

Appellees argue that the use is a professional office.

From the direct language of the regulation a professional office must be "in the building used by practitioner as his or her private dwelling." (Id.) A home occupation, by its name designation, also carries the same requirement. Under the pre-1955 regulations, appellees are not in compliance because they admittedly do not reside in the building where they practice dentistry.

People's Counsel exhibit #5 is a print out of two computer screens from the Maryland Department of Assessment and Taxation Real Property System for Baltimore County. Exhibit #5 shows that the primary structure on the property at 7100 York Road was built in 1956. (The same document also shows the correct spelling of the previous owner to be Philip C. Deardorff.) Assuming this to be an accurate date, the regulations that went into effect in 1955 would control. The "A" zone became an R.6 zone in 1955. Article II section 209 of the 1955 B.C.Z.R. states:

6

The following uses only are permitted (in an R.6 zone):  
209.1- Uses permitted and as limited in R.40 Zone;

Under the R.40 zone, sections 200.7-8 are relevant and read as follows:

- 200.7- Offices of a doctor or dentist but with no hospital facilities, and offices or studios of a lawyer ... when these or offices of similar professions are situated in the same dwelling used by any of the foregoing persons as his residence. Not more than 25% of the floor area of the dwelling shall be used for offices or studios ...  
200.8- Home occupations, as heretofore defined in Section 101 ...

The 1955 revised regulations define home occupation, in part, as:

Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not have any exterior evidence, other than a permitted sign, to indicate that the building is being utilized for any purpose other than that of a dwelling ...

As with the pre-1955 regulations, the 1955 regulations require that the practitioner reside in the same building where the home occupation or professional office is located.

Under either set of regulations and regardless of the professional office or home occupation designation the appellees current use of the property as a dental office and a rental property, without using it as their primary dwelling, is in violation of regulations for zones "A", R.6, and D.R. 5.5.

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For all of the aforementioned reasons, the Baltimore County Board of Appeals erroneously applied the law to the facts in this case. The decision of the Board is hereby reversed.

*Barbara Kerr Howe*  
Barbara Kerr Howe  
County Administrative Judge

CLERK TO NOTIFY:

*all clerk*

**True Copy Test**

SUZANNE MENSCH, Clerk

*Suzanne Mensch*  
Assistant Clerk

8

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR  
FOR BALTIMORE COUNTY, RODGERS FORGE  
COMMUNITY ASSOCIATION, INC., HONEY  
HOLSTON, INDIVIDUALLY, AND  
DONALD GERDING, INDIVIDUALLY  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF THE  
APPLICATION OF MARK P. JENKINS, ET UX  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE WEST SIDE YORK ROAD  
CHUMLEIGH AVENUE (7100 YORK ROAD)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 95-95-SPH

\* CIVIL  
ACTION  
\* No. 3-C-95-5091

PROCEEDINGS BEFORE THE ZONING COMMISSIONER  
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND  
OFFICE OF PERMITS AND DEVELOPMENT MANAGEMENT  
OF BALTIMORE COUNTY

RECEIVED AND FILED

No. 95-95-SPH 3:02

September 8, 1994 Petition for Special Hearing to approve a  
dental office in a residence in a D.R. 5.5  
zone filed by Francis X. Borgerding, Jr.,

95-95-SPH, Mark P. Jenkins, et ux  
File No. 3-C-95-5091

2

Esquire, on behalf of Mark P. and Adrienne  
Jenkins.

September 22 Publication in newspapers.

October 12 Hearing held on Petition by the Zoning  
Commissioner.

November 2 Order issued by the Zoning Commissioner  
wherein Petition for Special Hearing was  
GRANTED with one restriction.

December 1 Notice of Appeal filed by J. Carroll Holzer,  
Esquire, on behalf of Rodgers Forge Community  
Association, Inc. and Honey Holston,  
individually.

April 27, 1995 Hearing before the Board of Appeals.

May 18 Deliberation completed.

May 31 Opinion and Order issued by the majority of  
the Board in which the Petition for Special  
Hearing was GRANTED with restrictions.  
Dissenting Opinion by S. Diane Levero.

June 15 Petition for Judicial Review filed in the  
Circuit Court for Baltimore County by People's  
Counsel for Baltimore County, Rodgers Forge  
Community Assn., Inc., Honey Holston,  
individually, and Donald Gerding,  
individually.

June 23 Copy of Petition for Judicial Review received  
by the Board of Appeals from the Circuit Court  
for Baltimore County.

June 26 Certificate of Notice filed in the Circuit  
Court for Baltimore County.

July 26 Amended Certificate of Notice sent to  
interested parties.

August 15 Transcript of testimony filed.

Petitioner's Exhibits No. 1 - Plat to accompany Petition  
2 - Map showing existing zoning,  
subject site in red  
3 - A thru U - Photos - Shows  
screening around 7100 York Road  
4 - Copy of Zoning Regulations for  
Baltimore County 2-2-45 to 7-2-  
53 and 7-2-53 - 3/30-55  
5 - Baltimore County Zoning

95-95-SPH, Mark P. Jenkins, et ux  
File No. 3-C-95-5091

3

Regulations - adopted 3/30/55

- 6 -Petition with signatures from  
patients  
7 -A through D - Letters of support  
from neighbors & patients

- People's Counsel Exhibits No. 1 -Portion of ADC map showing in  
yellow intersection of York  
& Chumleigh Rd  
2 -Portion of Zoning Map  
3 -Part of Map of Rodgers Forge  
(commercial properties in  
yellow)  
4 -Tax Map (portion)  
5 -Tax Assessment Records for  
Subject Site  
6 -Multiple Listing, 7100 York  
Road  
7 -Baltimore County Zoning  
Regulations, 1975  
8 -County Council Bill 105, 1982  
9 -Master Plan excerpt, 1989-  
2000  
10-Affidavit, Honey Holston  
11-Photographic Map, Baltimore  
County Office of Planning &  
Zoning (subject property in  
yellow)

August 15, 1995 Record of Proceedings filed in the Circuit  
Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered  
and upon which said Board acted are hereby forwarded to the Court,  
together with exhibits entered into evidence before the Board.

Respectfully submitted,

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals of Baltimore  
County, Room 49, Basement - Old Courthouse  
400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

cc: People's Counsel for Baltimore County, et al  
Rodgers Forge Community Association, Inc.  
Honey Holston  
Donald Gerding  
Francis X. Borgerding, Jr., Esquire  
Mr. and Mrs. Mark P. Jenkins